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Case No: 030

The Truth, Reconciliation and National Unity Commission

In the Complaint of Madhuri Valabhji Shah

31 December 2022

Determination on the Complaint of Madhuri Valabhji Shah

Complainant:
Madhuri Valabhji Shah

I. ADMISSIBILITY

1. The following determination is made pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission (TRNUC) Act, 2018, which provides that the Commission shall make decisions and recommendations. The determination 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 of a complaint, pursuant to Rule 25(1) of the Commission's Rules of Procedure and Evidence ("Rules"), adopted by the Commission pursuant to Section 8(1) of the Act, the Commission must satisfy itself that the complaint is admissible before it for determination. To be admissible before the Commission, a number of criteria must be satisfied as outlined below.

3. Pursuant to Section 3(4) of the TRNUC Act, a complaint shall be filed within six months of the Commission's commencement of mandate, and pursuant to Section 3(5), a complaint may be filed by a victim, a representative of a victim, or a close surviving relative of a deceased victim. The mandate of the Commission commenced on 9 August 2019. To be admissible, complaints must have been filed on or before 9 February 2020.

4. The complaint of Madhuri Shah was filed on 13 August 2019. Consequently, the complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Pursuant to Section 2(8), the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977. Section 2(8), subparagraphs (a) to (m), identifies a non-exhaustive list of acts falling within the definition of a violation of human rights. 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. The complainant alleged unjustified acquisition or loss of property during the primary temporal period of the mandate of the Commission from the Coup d'état of 1977 until the reintroduction of the multiparty system in 1993.

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[1] "[...] (a) unlawful killing; (b) unlawful imprisonment or other deprivations of physical liberty; (c) torture; (d) rape; ()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. Satisfied that the complaint alleged human rights violations relating to the Coup d'état of 1977, the Commission determined the case of the complainant prima facie admissible on 27 February 2020.

8. Having deemed the case prima facie admissible, on 3 March 2021 the Commission commenced its public hearings in relation to this case.[2] The Commission received evidence from the complainant and one (1) witness.[3] The Commission also received documents from the complainant in support of her case and accessed relevant documentary evidence.

A. Unlawful Acquisition of Property

1. Evidence of Madhuri Shah

9. On 3 March 2021, Ms. Madhuri Valabhji Shah appeared before the Commission via Skype to set out her complaint before it. Ms. Valabhji Shah informed the Commission that her late husband, Mr. Ramniklal Valabhji, bought his land, Ex-Rocco, Parcel V3810 comprising of 6365 sqm from Mr. Raoul Nageon de L'estang, Notary Public on 11 May 1965.

10. Ms. Valabhji Shah claimed that the land was illegally taken from Mr. Valabhji by the Government in 1984 under the pretext that Mr. Valabhji had not paid his taxes. She alleged that this was the usual modus operandi of the dictatorship as many people were penalised if they did not support the Government.

11. Ms. Valabhji Shah claimed that the dictatorship alleged that Mr. Valabhji owed millions in taxes, yet it was unheard of at that time for anyone to earn in the millions. Ms. Valabhji Shah claimed that had Mr. Valabhji not paid his taxes annually, he would not have been permitted to continue his practice as a lawyer and public notary.[4]

12. Ms. Valabhji Shah claimed that Mr. Valabhji had also bought land at Beau Vallon, behind Coral Strand Hotel, Parcel V479 comprising of 5770 sqm from Mr. Philip Jumeau on 19 August 1971. The land was illegally seized by the dictatorship in 1981 and subdivided into plots V2513, V2514, V2515 and V2516.

13. Ms. Valabhji Shah claimed that this illegal seizure was again to harass members of the population who did not support the Government.

14. Ms. Valabhji Shah claimed that Mr. Valabhji's residence at Bel Eau, on Parcel V5108, along with all its contents were destroyed and that they were forced to leave the country as they feared for their own safety. She claimed that they received political asylum from the United Kingdom.

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[2] Hearing No. 262 of Wednesday, 3 March 2021.
[3] Hearing No. 262 of Thursday 3 March 2022.
[4] See Valabhji v Controller of Taxes 3 SCAR (Vol II) Seychelles Court of Appeal Report pp. 372-380.

15. Ms. Valabhji Shah claimed that she understood that approximately 800 properties were unlawfully seized and 18,000 people had no option but to leave the country.

16. Before the Commission, Ms. Valabhji Shah claimed compensation or return of lands.

2. Evidence of Patrick Lablache

17. The Commission called Mr. Patrick Lablache on 3 March 2022[5] to provide evidence before it concerning Ms. Valabhji Shah's claims. Mr. Lablache confirmed the complainant's claim that the Government had compulsorily acquired Parcel V5108 at Bel Eau on 21 April 1986, in the national interest pursuant to the Lands Acquisition Act, 1977. Mr. Lablache produced a copy of a letter, dated 22 April 1986, from the Principal Executive Officer addressed to Mrs. Valabhji, C/o Mr. Kieran B. Shah, which stated that Parcel V5108 at Bel Eau had been compulsory acquired in the national interest pursuant to the Lands Acquisition Act, 1977 and that under Section 16 of the Act, Mrs. Valabhji could make a claim for compensation.

18. Mr. Lablache produced a copy of a letter, dated 18 June 1991, from the Director of Lands to Mr. Shah acting for Mrs. Valabhji in which the Director of Lands stated that he was directed to offer the sum of SR 200,000 as compensation for compulsory acquisition of Parcel V5108 at Bel Eau.

19. Mr. Lablache produced a copy of a letter from Mr. Kieran Shah to the Director General, Lands Division, received on 24 July 1991, in which Mr. Shah stated that his client, Mrs. Valabhji, did not accept the offer of SR 200,000 for the Parcel V5108 at Bel Eau. Mr. Shah further advised that the compensation should be considerably higher as the place was situated in a high market value area and the house was big and luxurious with a swimming pool, fruit trees, and a large area over which 3 blocks of flats with parking had been erected. He requested a more realistic offer.

20. Mr. Lablache produced a copy of a letter dated 8 September 1994 from the Director Lands to Mr. and Mrs. R. Valabhji, C/o Mr. Shah which stated that further to their negotiations the Government had agreed to pay the sum of SR 800,000 as full and final compensation for the acquisition of Parcel V5108 at Bel Eau. The money was to be paid in four equal instalments, of which SR 200,000 would be paid that year and the balance of SR 600,000 payable in three equal quarterly instalments with effect from 1 April 1995.

21. Mr. Lablache produced a copy of a letter, dated 20 September 1994, from Mr. Valabhji to the Director Lands in which he stated that he and his wife accepted the offer of SR 800,000 in full and final compensation for Parcel V5108 at Bel Eau. Mr. Valabhji requested that the first instalment be paid by or before the end of the month and that interest be paid on the balance of SR 600,000 until final payment at the end of 1995.

[5] Hearing No.262 of Thursday 3 March 2022.

22. Mr. Lablache produced a copy of a letter dated 25 September 1995 from the Assistant Director of Lands to Mr. Valabhji which stated that a cheque for the sum of SR 204,000, being the last instalment of compensation due in respect of Parcel V5108 at Bel Eau was enclosed. Mr. Lablache further produced a copy of the cheque.

23. Mr. Lablache also produced a copy of a letter, dated 31 January 2006, from the Special Advisor to Mr. Valabhji, made with reference to Mr. Valabhji's letter of 26 September 2005, addressed to the President, seeking compensation for the compulsory acquisition of properties. The letter stated that the Special Advisor was now in a position to give a substantive reply, and stated as follows:

> Ex- Rocco Parcel V3810 (6365 sqm) was registered in Government's ownership in accordance with a Court Order dated 14 February 1984 (Case No.119/80). A review for compensation as provided for in the Seychelles Constitution was not applicable in this case as this did not fall under the purview of the Lands Acquisition Act (1977); Residence for Bel Eau Parcel V5108 (6415 sqm) was compulsorily acquired by the Government in April 1986. A compensation of Rs800,000 was paid in four equal quarterly instalments plus interest at 8%p.a from 1 April 1995. There was no application for review during the stipulated period and therefore the case was closed; Three acres of land Ex-John Jean-Louis, Mare Anglaise Parcel H260 (12241 sqm) was compulsorily acquired in October 1984 and compensation in the sum of Rs100,000 was paid in 1985. No application for review had been received by the Ministry during the stipulated period and therefore the case was closed; 1 ½ acres of land at Beau Vallon behind the Coral Strand Hotel identified as parcel V479 (5770 sqm) was seized by the court. There was therefore no issue of compensation as far as the Ministry was concerned and the case was closed. The Special Advisor stated that there was no issue of compensation in respect of the four land cases listed in Mr. Valabhji's letter to the President as the said land cases are closed. He further stated that with respect to the fifth land case, a plot bordering the road at Beoliere, there was no details available for the Ministry to research the matter and requested details in terms of its parcel number, however, if there is no response within 14 days of the letter, the Ministry would have to close the land case.

24. Mr. Lablache stated that apart from Parcel V5108, at Bel Eau, other properties belonging to Mr. Valabhji were compulsorily acquired by the Government since Mr. Valabhji owed over SR 3 million in tax.

25. Before the Commission, Mr. Lablache stated that for Parcel V5108, the case was closed as Mr. and Mrs. Valabhji were not entitled to any further compensation under the Lands Acquisition Act, 1977 (as amended). Parcel V3810, at Ex-Rocco and Parcel V479, at Beau Vallon behind the Coral Strand Hotel, both properties were seized for failure to pay taxes and a review for compensation was not applicable. As for Parcel H260, the Ex-John Jean-Louis property, at Mare Anglaise, no application for review of compensation under Schedule 7 Part III of the 1993 Constitution was received from Mr. Valabhji within the specified time.

3. Land File

26. On 8 February 2021, the Commission requested access to Mr. Valabhji's land file for Parcel V479, subdivided into plots V2513, V2514, V2515, and V2516; and Parcel V3810 from the Ministry of

Lands and Housing. The Commission was granted access to one file (LAU/A/137 – Acquisition of land) on 9 February 2021. On 11 February 2022, the Commission again requested access to Mr. Valabhji's land file for Parcels V3810, V5108, H260 and V479 from the Ministry of Lands and Housing. The Commission was granted access to three files (Parcels V3810 and V5108 – Vol I & II and H260) on 14 and 22 February 2022 respectively. The Commission was not given access to land file V479 and was told verbally that the file had not been located.

i. Parcel V5108 – Bel Eau Residence

27. Documents on the land file (Parcel V5108), showed that on 22 October 1985, Mr. Kieran B. Shah, Attorney-at Law wrote to the Principal Secretary, Ministry of National Development and referred to the Government surveyor's letter, dated 11 October 1985. Mr Shah enquired whether Mrs. M. Valabhji's house on property V5108 at Bel Eau and some surrounding land could be excluded from the proposed acquisition and whether a private sale may be done. On 6 November 1985, the Principal Secretary wrote to Mr. Shah and stated that the property was required for housing purposes and since the owners of the house were not domiciled in the country the Ministry did not believe they needed the house. He stated that the property was required urgently and would be acquired in the national interest very shortly.

28. On 21 April 1986, the Government compulsorily acquired Parcel V5108 at Bel Eau in the national interest pursuant to the Lands Acquisition Act, 1977. On 22 April 1986, the Principal Executive Officer wrote to Mrs. Madhuri Valabhji, C/o Mr. Shah notifying of the acquisition and advising that under Section 16 of the Act, Mrs. Valabhji could make a claim for compensation.

29. On 13 June 1986, the Principal Executive Officer wrote to a Mr. V. Kidao of Bel Eau and informed him that the premises he was occupying at Bel Eau had been acquired by the Government on 21 April 1986, and his rental would now be payable to the Lands Division with effect from the date of acquisition. On 15 July 1986, Mr. V. Kidao acknowledged receipt of the Principal Executive Officer's letter and stated that he had been paying the previous owners SR 2,000 per month for rental of the furnished premises and enclosed a cheque for the sum of SR 4,666 towards the rent for the months June, May and 10 days of April.

30. On 23 June 1986, the Controller of Taxes wrote to the Ag. Chief Lands Officer and referred to their discussion a couple of weeks prior, whereby the Government had compulsorily acquired a Parcel of land belonging to Mr. Ramniklal Valabhji and his wife. The Controller of Taxes forwarded a notice under Section 157 of the Income Tax Assessment Decree and requested that any compensation due to Mr. Valabhji be forwarded to the Taxation Office. The Income Tax Assessment Decree showed that Mr. Valabhji owed SR 2,636,171.12 to the Taxation Office. On 18 July 1986, the Principal Executive Officer acknowledged receipt of the Controller of Taxes, Income Tax Assessment Decree in respect of Mr. Valabhji.

31. On 27 June 1986, the High Commission of India wrote to the Ministry of Planning & External Relations and stated that Mrs. Valabhji, an Indian Citizen, claimed that her property in Mahé had been acquired by the Government of Seychelles and had complained to the Government of India about the

compulsory acquisition. The High Commission of India stated that they would appreciate it if details of the case were made available to them.

32. On 1 September 1986, the Senior Lands Officer wrote to the Principal Secretary for Lands and referred to the attached copy of the Diplomatic Note from the High Commission of India, dated 27 June 1986, and requested that the Principal Secretary reply to the High Commission of India as follows:

> Mrs. Ramniklal Valabhji's house and property of 6415 sqm in area of Bel Eau was acquired in the national interest by the Seychelles Government under the provisions of the Lands Acquisition Act, 1977 due to Government policy vis-à-vis absentee landlords who are merely drawing rent from the country and Mr. Ramniklal Valabhji, Mrs. Valabhji's husband had persistently failed to settle his income tax debt of over Rs2.6 million due to the Government of Seychelles; Mrs. Valabhji had also complained to the Government of Seychelles that the central part of the house contained their prayer room. Whilst the Government took exception to this it found it strange that a place of worship should have been rented out since the ex-owner's departure from Seychelles in 1982; the house plot will be excised from the property and allocated to a needy Seychellois family whilst the remainder of the property, which are situated in an area earmarked for high density housing development would be used as such.

33. On 18 July 1986, Mr. Shah submitted a claim for compensation in the sum of SR 625,000 under the Land Acquisition Act on behalf of Mrs. Madhuri Valabhji for the acquisition of Parcel V5108.

34. On 4 November 1986, the Controller of Taxes wrote to the Ag. Chief Lands Officer referring to the Notice issued on 23 June 1986, regarding Mr. Valabhji and enquired when the Taxation Office could expect to receive payment. On 20 November 1986, the Principal Executive Officer wrote to the Controller of Taxes and stated that Mrs. Madhuri Valabhji had submitted a claim for compensation in respect of the compulsory acquisition of Parcel V5108 and the claim was still under consideration. On 22 April 1987, the Controller of Taxes wrote to the Principal Secretary and requested the position regarding the Taxation Notice in respect of Mr. Valabhji. On 30 April 1987, the Principal Secretary wrote to the Controller of Taxes and stated that the claim submitted by Mrs. Madhuri Valabhji was still under consideration.

35. On 13 April 1988, the Director Land and Surveys wrote to Mr. V. Kidao and informed him that the premises would be demolished to make way for a new construction and one month's notice was given to vacate the premises.

36. On 18 June 1991, the Director Lands wrote to Mr. Shah and stated that he was directed to offer the sum of SR 200,000 as compensation for compulsory acquisition of Parcel V5108 at Bel Eau. Mr. Shah wrote to the Director General, Lands Division, which was received on 24 July 1991, and stated that his client, Mrs. Madhuri Valabhji did not accept the offer of SR 200,000 for Parcel V5108 at Bel Eau. Mr. Shah stated that the compensation should be considerably higher as the place is situated in a high market value area and the house was big and luxurious with a swimming pool, fruit trees, and large area over which 3 block of flats with parking have been erected and "therefore fully justified a more realistic offer". On 12 September 1991, the Lands Officer wrote to Mr. Shah and referred to his undated

letter received by the Ministry on the 24 July 1991 and stated that he was directed to make a revised offer of SR 265,000 as compensation for compulsory acquisition of Parcel V5108 at Bel Eau.

37. On 10 February 1992, Mrs. Madhuri Shah wrote to the Director Lands and referred to the offer of SR 265,00 for her house at Bel Eau. She stated that she wondered how this figure had been arrived at after a lapse of so many years since the house was bulldozed together with all contents. Mrs. Shah stated that the jewellery, rare books, furniture, steel wardrobes and clothes exceeded SR 1 million. She stated that she had been in the country since 21 January 1992, with her husband and had not been able to find a similar property for less than SR 2 million and would it not be preferable to restore the property back to her.

38. On 17 February 1992, Mr. Valabhji wrote to the then President and stated that he had not been able to secure any accommodation for lease or purchase and wondered if a three-bedroom flat at Bel Eau could be allocated to him from April 1992, while negotiations for settlement were ongoing. On 4 May 1992, the Director Lands wrote to Mrs. Madhuri Shah and stated that he was directed to inform her that Government did not acquire the moveable property and jewellery as alleged in her letter and at the date of acquisition the property was leased by herself, Mrs. Shah, to Mr. Kidao of Vijay Construction. He stated that the revised offer of SR 265,000 comprised SR 200,000 for the building on Parcel V5108 and SR 65,000 as an ex-gratia award for the land itself. He further stated that under the Land Acquisition Act 1977 (as amended), Mrs. Valabhji was free to institute proceedings against the Republic in the Supreme Court for determination of the amount of compensation payable if the offer was not agreeable.

39. On 21 August 1992, Mr. Shah wrote to the Director General and proposed that the claim be settled by an exchange of land for the land, and a cash payment for the house. He stated that his client, Mrs. Madhuri Shah Valabhji would accept Parcel V479 (now Parcels V2513, V2514, V2515 and V2516) having an area of 5709 sqm, which was some 700 sqm smaller and with no building on it, and SR 265,000 with interest thereon from the date of acquisition, namely 21 April 1986.

40. On 8 September 1994, the Director Lands wrote to Mr. and Mrs. R. Valabhji and stated that further to their negotiations Government had agreed to pay the sum of SR 800,000 as full and final compensation for the acquisition of Parcel V5108 at Bel Eau. The money would be paid in four equal instalments of which SR 200,000 would be paid this year and the balance of SR 600,000 payable in three equal quarterly instalments with effect from 1 April 1995.

41. On 20 September 1994, Mr. Valabhji wrote to the Director of Lands and stated that he and his wife accepted the offer of SR 800,000 as full and final compensation. He requested that the first instalment be received by or before the end of the month and interest on the balance of SR 600,00 until final payment at the end of 1995. On 23 September 1994, the Assistant Director Lands wrote to Mr. Valabhji and attached a cheque for the sum of SR 200,00 being the first instalment of compensation in respect to the compulsorily acquisition of Parcel V5108, Bel Eau. On 10 April, 30 June, and 25 September 1995 respectively, the Assistant Director Lands wrote to Mr. Valabhji and attached cheques for the second, third and final instalments of compensation due to Mr. Valabhji.

42. On 26 September 2005, Mr. Valabhji wrote to the then President and stated that he understood that the Government was willing to return lands compulsorily acquired and had submitted his list as follows: Ex- Rocco Parcel V3810; Residence at Bel Eau Parcel V5108; three acres of land Ex-John Jean-Louis, Mare Anglaise Parcel H260; 1 ½ acres of land at Beau Vallon behind the Coral Strand Hotel and a plot bordering the road at Beoliere. On 31 January 2006, the Special Advisor wrote to Mr. Valabhji and stated, with reference to Mr. Valabhji's letter of 26 September 2005, that he was now in a position to give a substantive reply as follows:

> Ex- Rocco Parcel V3810 (6365 sqm) was registered in Government's ownership in accordance with a Court Order dated 14 February 1984 (Case No.119/80). A review for compensation as provided for in the Seychelles Constitution was not applicable in this case as this did not fall under the purview of the Lands Acquisition Act (1977); Residence for Bel Eau Parcel V5108 (6415 sqm) was compulsorily acquired by the Government in April 1986. A compensation of Rs800,000 was paid in four equal quarterly instalments plus interest at 8%p.a. from 1 April 1995. There was no application for review during the stipulated period and therefore the case was closed; Three acres of land Ex-John Jean-Louis, Mare Anglaise Parcel H260 (12241 sqm) was compulsorily acquired in October 1984 and compensation in the sum of Rs100,000 was paid in 1985. No application for review had been received by the Ministry during the stipulated period and therefore the case was closed; 1 ½ acres of land at Beau Vallon behind the Coral Strand Hotel had been identified as parcel V479 (5770 sqm) was seized by the court. There was therefore no issue of compensation as far as the Ministry was concerned and the case was closed. The Special Advisor stated that there was no issue of compensation in respect of the four land cases listed in Mr. Valabhji's letter to the President as the said land cases are closed. He further stated that with respect to the fifth land case, a plot bordering the road at Beoliere, there was no details available for the Ministry to research the matter and requested for details in terms of its parcel number, however, if there is no response within 14 days of the letter, the Ministry would have to close the land case.

43. There are no further documents on the land file.

ii. Parcel V3810 – Ex-Rocco

44. Documents on the land file (Parcel V3810), showed that on 29 February 1980, the Controller of Taxes wrote to the Permanent Secretary, Department of Economic Development, Planning and Housing and stated that according to their records, Mr. Valabhji was the owner of the following properties: residence Bel Eau; Title No. V479 at Beau Vallon and Ex-Rocco and that Taxation Office should be notified immediately of any prospect of any proposed sale of any of the mentioned properties. On 7 March 1980, the Senior Lands Officer wrote to the Attorney General and attached a copy of the letter from the Controller of Taxes regarding any sale of properties owned by Mr. Valabhji. The Senior Lands Officer stated that the Attorney General should also be informed in order that the appropriate action could be taken. On the same date, 7 March 1980, the Senior Lands Officer wrote to the Controller of Taxes and stated that the Ministry would notify the Taxation Office immediately of any sale of properties owned by Mr. Valabhji and that the Attorney General had been informed accordingly.

45. On 20 March 1980, the Controller of Taxes wrote to the Senior Lands Officer and stated that for the Ex-Rocco property, Mr. Valabhji had offered the Taxation Office a mortgage of £300,000 as a means

of clearing his purported tax debt and would appreciate if the Ministry of Lands could conduct a valuation in respect of this property. On 1 April 1980, the Senior Lands Officer wrote to the Controller of Taxes and stated that while the Ministry had taken note of the urgency of a valuation of Ex-Rocco property, owned by Mr. Valabhji, it would take some time due to the complexity of such a valuation and that he would endeavour to expedite the matter as soon as a site inspection had been carried out and the tenant situation assessed. On 28 April 1980, the Lands Officer wrote to the Controller of Taxes and stated that on inspecting the Ex-Rocco property it was noted that there are seven sitting tenants, six of which are on monthly tenancies and one a business tenancy with a lease of two years unexpired. The market value of the freehold of the property amounted to SR 995,000 and if the Government accepted 75% of the open market value as the maximum advance, the recommended maximum security that could be offered for a mortgage on the property would be SR 750,000.

46. On 3 September 1980, the Principal Secretary wrote a memorandum to the Lands Officer and stated that the Council of Ministers had asked that a valuation on the Ex-Rocco property, owned by Mr. Valabhji, be conducted as soon as possible. On 7 October 1980, the Lands Officer wrote a memorandum to the Principal Secretary and referred to an extract from the Council of Ministers Minutes of 4 September 1980 at folio (1) which stated as follows:

> [T]he Council advised that the Minister for Planning and Development should undertake valuations with a view to purchasing the following properties and to report to Council: Valabhji properties in Mont Fleuri; Kim Koon property in the junction of Revolution Avenue and the Rue des Freres Maristes and Mr. Darab Mistry's house at Bel Eau. The President concurred and ordered accordingly.

47. The memorandum further stated that the Controller of Taxes had earlier requested a valuation of the Valabhji's properties at Mont Fleuri as the latter wanted to give Government a mortgage of £300,000 over the properties. The valuation was duly carried out on 28 April 1980, and the figure stood at SR 995,000. The Lands Officer stated that to clarify matters he requested the Attorney General's advice on the Government's proposed acquisition of these properties as he understood that there was a court case against the Valabhjis. He claimed that the Attorney General had stated that the Valabhjis had once again offered to give Government a mortgage over the properties as security for his outstanding tax bill. The question of provisional seizure was considered, and the Attorney General was of the opinion that it would only be applied to movables and not immovable property. The Land Officer claimed that the Attorney General suggested that the best course of action at this stage was for Government to take a mortgage on the property and left the question of acquisition for a later date. For the purpose of the Land Acquisition Act, once the Government had a mortgage on the properties Government would also have an "interest in the land" and this would ensure recovery of some of the debts. He stated that the Controller of Taxes, however, was of the opinion that since the value of the Mont Fleuri properties was much less than the amount of tax outstanding, he "would be most reluctant to accept any mortgage over Mont Fleuri properties only". In other words, the Controller of Taxes was suggesting a mortgage over Mont Fleuri properties as well as other properties owned by the Valabhjis. The Lands Officer further stated that he awaited the outcome of the hearing on 16 October 1980 from the Attorney General and suggested that nothing be done until then.

48. On 28 June 1983, the Senior Lands Officer wrote to the Attorney General and stated that they had inspected Parcels V3810, V1539, and V479, belonging to Mr. Valabhji and were of the opinion that their open market values were as follows: Parcel V3810 – SR 450,000; Parcel V1539 – SR 30,000; and Parcel V479 – SR 70,000.

49. On 14 February 1984, Court Order (Case No. 119/80) stated that owing to forfeiture for non-payment of taxes, the Ex-Rocco property, Parcel V3810 (6365 sqm), owned by Mr. Valabhji, was registered to the Government.

50. On 10 April 1984, the Senior Executive Officer wrote to the Registrar, Supreme Court and stated that Parcel V3810 was still in the name of Mr. Valabhji and he would be grateful if the land could be registered to the Government in accordance with the Order of Court from 14 February 1984, in Case No. 119/80 to enable the Government to put the land to use without further delay.

51. On 1 June 1984, the Ag. Chief Lands Officer wrote to the Controller of Taxes and stated that Parcel V3810 had been registered to the Government on 16 May 1984, and that the Lands Division would take care of the property in future. On 11 June 1984, the Ag. Chief Lands Officer wrote again to the Controller of Taxes and stated that the tenants on the property V3810 paid their rents direct to the Lands Division, as the property belonged to the Government since 16 May 1984.

52. On 14 January 1985, the Government leased Parcel V5010, a subdivision of plot V3810, Ex-Rocco property, to National Consultancy Services Limited for a period of 99 years, the first two years at SR 12.00 per annum, followed by a further five years at SR 24,540 per annum revised every five years thereafter.

53. On 1 October 1985, as per minute 20, the Principal Executive Officer wrote to the Attorney General and stated that the President had approved the transfer of Parcel V5061 another subdivision of plot V3810, Ex-Rocco property to D'Arros Development (Pty) Ltd, in exchange for Parcel LD101 owned by the West and East Sisters Islands Aktiengessellshaft (both companies owned by Prince Shahram Pahlavi of Iran). The Principal Executive Officer further stated that the Attorney General needed to draft the documents in respect of the transfers and make the necessary arrangements for signature and registration. Once LD101 was transcribed to the Government, LD101 would be transferred to the Seychelles Housing Development Corporation (SHDC).

54. On 16 September 1987, Parcel V5062, a subdivision of plot V3810, was transferred by the Government to SHDC to sell to the existing occupants.

55. There are no further documents on the land file.

iii. Parcel H260 – Mare Anglaise

56. Documents on the land file (Parcel H260), showed that on 9 April 1984, Mr. Patrick Laporte wrote to the Principal Secretary, Ministry of National Development and referred to discussions he and his wife had with the then Minister about the possibility of exchanging their three plots of land at Mare Anglaise

for the property in the same area which was looked after by Mr. Valabhji but registered in the name of Heirs John Jean-Louis. He stated that the offer would be useful to the Ministry in their effort to identify land in the vicinity for housing development.

57. On 30 April 1984, Mr. Ron Rose wrote to the Ministry of National Development and referred to their letter dated 16 April 1984. Mr. Rose stated that sometime in the year 1972/73, he had sold three acres of land to Mr. Valabhji from the John Jean-Louis Estate, Mare Anglaise. Unfortunately, he was not in a position to offer any legal papers on the sale of the land since his wife (deceased) had attended to the legal side of the matter.

58. On 10 May 1984, the then Minister for National Development wrote a memorandum to the Principal Secretary and stated that they should seriously considered acquiring Parcel H260 from Mr. Valabhji. He stated that he had met with Mrs. Elizabeth Souffe, a sitting tenant on Parcel H260, Mare Anglaise and she was "quite willing to stay on the property provided her house was rebuilt". The Minister requested that the Principal Secretary find out whether there was any application that had been submitted under the Tenants' Rights Act on that property. On 29 May 1984, the Principal Secretary wrote a memorandum to the then Minister for National Development and stated that Mr. Valabhji owned about three acres of land at Mare Anglaise, the same property that Mr. Patrick Laporte wanted to exchange for a plot at the back of his residence. He stated that Mrs. Elizabeth Souffe who was living in deplorable conditions was one of three tenants who had applied for registration under the Tenants' Rights Act and was still living on that land. He further stated that although there was not the slightest doubt that the tenants would be finally adjudicated their houses, which could then be rebuilt by SHDC, this property could be acquired and several houses constructed thereon to resolve the acute housing shortage of Beau Vallon.

59. On 29 May 1984, the Chairman, Beau Vallon SPPF Branch wrote to the Principal Secretary, Ministry of National Development and stated as follows:

> Mrs. Odolphine Fanchette, Mrs. Elizabeth Souffe and Mrs. Jannie Fanchette are occupying an old house at Mare Anglaise on the property of Mr. Ramniklal Valabhji (each of them is occupying a room), Mrs. O. Fanchette, Mrs. J. Fanchette and Mrs. Souffe applied to be registered as a statutory tenant for the same old house and plot of land. All three of them have applied for a housing loan and they fall in the category of priority. We do not think that the property, which is overlooking the road, should be used to house three persons and it is too small to build a house for each of them. Besides that, Beau Vallon is a tourist area and housing near the road should be well designed. It is much better that it is used for tourism development/guest house. It will be interesting to know what you think the property is suitable for, in the Beau Vallon Utilisation Plan.

60. On 8 June 1984, the Principal Executive Officer wrote a file note and stated that she had conducted a search in the Land Registry on Parcel H260. The property was owned by the Heirs of John Jean-Louis, namely Mrs. Bessie Jane Rose (née Jean-Louis), Mrs. Florence Lena Cooper (née Jean-Louis), Mrs. Judy Harris (née Jean-Louis), and Mr. Don Jean-Louis, and they were all represented by Mr. Georges René as their fiduciary. The land Parcel H260 was free from encumbrances.

61. On 18 October 1984, the Government compulsorily acquired land Parcel H260 (12,241.8 sqm), situated at Mare Anglaise, Beau Vallon in the national interest pursuant to the Lands Acquisition Act, 1977.

62. On 24 October 1984, the Principal Executive Officer wrote to Mr. René, in his role as fiduciary, and enclosed a copy of the Notice of Acquisition under the Lands Acquisition Act, 1977, which was published in the Official Gazette of 22 October 1984 in respect of compulsory acquisition of land Parcel H260, Beau Vallon. Mr. René was also advised that under Section 16 of the Lands Acquisition Act, 1977, the heirs could make a claim for compensation.

63. On 18 January 1985, heirs John Jean-Louis submitted a claim for SR 80,000 as compensation. On 30 January 1985, the Principal Executive Officer wrote to Mr. René, in his role as fiduciary, and stated that the claim for compensation in respect of the compulsorily acquisition of Parcel H260 had been accepted by the Minister for National Development for determination and a decision would be communicated in due course. On 24 February 1985, according to Minute Sheet Folio 16, the Minister for National Development wrote to the Principal Secretary and stated "This land was completely abandoned. The claimants did not even know that it still belonged to them. They thought it had been purchased by Mr. Ramniklal Valabhjee (sic) Please make an ex-gratia offer of Rs10,000".

64. On 7 March 1985, the Ag. Chief Lands Officer wrote to Mr. Georges René, fiduciary for Heirs John Jean-Louis, and stated that the value of the land had been found to be NIL in accordance with the Second Schedule to the Lands Acquisition Act, 1977. However, the Minister had exercised his discretion under para 15 of the Second Schedule and was prepared to make an ex-gratia award of SR 10,000. On 22 March 1985, Mr. Georges René, fiduciary for Heirs John Jean-Louis wrote to the Ministry of National Development and stated that the heirs had no option but to accept the offer. On 20 May 1985, Mr. Georges René, fiduciary for Heirs John Jean-Louis, signed an agreement with the Government that SR 10,000 was paid was compensation for the acquisition of the land Parcel H260.

65. On 31 October 1986, the Government transferred Parcel H260, subdivided into Parcel nos. H1583, H1584, H1585, H1586, H1587, H1588, H1589, H1590, H1591, and H1592 to SHDC for SR 1.

iv. Land File Parcel V479 – Beau Vallon behind the Coral Strand Hotel

66. On 23 February 2022, the Land Officer informed the Commission investigator that the Ministry was still trying to locate the land file for Parcel V479.

2. Land Registration Documents

67. On 8 March 2021, the Commission also requested access to all relevant registered documents and the current Certificate of Ownership for Land Parcel V479 from the Lands Registration Division. The Commission was given access to those documents on 8 October 2021.

68. Those documents showed that Title V479 – Qualified and Proprietor – Mr. Nicole Ah-Time and Mrs. Sylva Ah-Time. A copy of THE SALE BY LEVY document showed that Parcel V479 was sold at the Judicial Sale in the Supreme Court of Seychelles in the matter of Controller of Taxes and Ramniklal Valabhji on 25 November 1983 to Mr. Joseph Whooly Pillay who had Power of Attorney for Mr. Nicole Ah-Time and Mrs. Sylva Ah-Time. The Government subdivided V479 into Parcels V2513, V2514, V2515 and V2516 and transferred to Mr. Nicole Ah-Time and Mrs. Sylva Ah-Time on 8 July 1993 for the sum of SR 74,154.83.

69. On 12 May 2022, the Commission investigator requested access to all relevant registered documents and the current Certificate of Ownership for Parcels V5108, V3810 and H260, other properties belonged to Mr. Valabhji. The Commission was given access to those documents on 17 June 2022.

70. Those documents showed that Title V5108 was subdivided into Parcels V12361 and V12362, and the Government of Seychelles was registered as Absolute and Proprietor. Title V3810 was subdivided into Parcels V5010 and V5011, to which the Government was the "Qualified and Proprietor". Title H260 was not registered under the Land Registration Act (New Land Registry).

3. Taxation File

71. The Commission contacted the Commissioner of Tax, Mrs. Herminie on 21 July 2021, requesting Mr. Valabhji's tax records from 1980-1984. Having received no response, the Commissioner reiterated its request on 25 August 2022. On 26 August 2022, Mrs. Herminie responded stating "We unfortunately do not hold records going that far back especially if the debt had been settled. The records at the time were manually kept".

4. Court Record

72. On 11 February 2022, the Commission requested from the Supreme Court library the court proceedings and judgment of The Government v/s Ramniklal Valabhji. On 21 February 2022, the Commission received a response that no records could be found. However, the Commission accessed the judgement from the reports of the Seychelles Court of Appeal and also received a copy of the Turnover Tax (Amendment) Decree 1978.

73. In Mr. Valabhji's defence at the Supreme Court, he had challenged the validity of the assessments, and the validity of the Decree under which they were made. At the Appeals Court, the judgement notes that Mr. Valabhji had applied to have the *ex-parte* judgement in favour of the Controller of Taxes set aside.[6] The appeal was on the following grounds:

    1. The Income Tax Assessment Decree 1978 was unconstitutional as all legislation enacted in Seychelles in 1977 and 1978 was unconstitutional, invalid and of no effect;
    2. The trial Judge had erred in refusing an adjournment;
    3. Hearsay evidence was wrongly admitted; and

[6] See Valabhji v Controller of Taxes 3 SCAR (Vol II) Seychelles Court of Appeal Report pp. 372-380.

4. The additional tax should not have been charged.[7]

74. In the appeal judgment, the Court focussed on the first argument regarding the validity of the Income Tax Assessment Decree 1978. The Court summarised Mr. Valabhji's arguments as follows "[...] that Decree and all other decrees in 1977 and 1978, before the coming into force of the new Constitution of 1979, which was endorsed by elections,[8] were invalid as they were not made in fulfilment of the 1976 Independence Constitution, but contrary to it". The Commission notes that the Judges unanimously found that the Income Tax Assessment 1978 was a valid enactment.

75. Sir Michael Hogan, acting as president of the court, stated as follows:

> The Court of Appeal had the advantage of not having to decide this case *in mediis rebus* but after an interval of some four years, during which the revolutionary regime had enjoyed unchallenged authority and maintained a stable and effective government in Seychelles, with little or no interruption of the ordinary life of its citizens. The smoothness and efficacy of the revolutionary transition and the fact that the new regime had, by 28th June 1977, received such widespread and unqualified acceptance and consent, was enough evidence to show that it was, already, a legal authority at that time. And, even if this assessment were wrong, because for example, there had been insufficient time for the habit of obedience to become manifest, there would be no reason to differ from the view reflected in the American cases expressed in Garner that when a regime is firmly established and accepted as legitimate, this legitimation is extended back to cover legislation enacted by the regime from the inception of its control.

76. Justice Lavoipierre concluded that "[t]he coup d'état did not meet with any opposition and between that time and the adoption of a new constitution there was a stable and effective Government".

77. While Justice Mustafa stated as follows:

> A Government cannot be divided in legitimate and illegitimate portions, the dividing line being the time when it establishes a constitution based on public consultation. One has to accept a successful revolution as valid from its inception if it has remained in office for a sufficient period of time and has the consent and backing of the people, express or implied. On this basis the coup Government had acquired legitimacy and validity.

78. The court did make findings as to the charge of additional taxes as applied in the *ex parte* ruling, with the majority finding that the additional tax as sought, became payable after 15 days had elapsed from the service of a notice of surcharge, and as Mr. Valabhji had never received such notice, the additional tax was not payable. The Commission notes that the Court did not look into the validity of the original assessment of taxes itself, and upheld the Tax Assessment of SR 3,331,315 under the Income Tax Assessment Decree 1978.

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[7] In finding in favour of the Controller of Taxes that court ordered payment of SR 3,331,315 plus SR 281,774 additional tax and costs.

[8] The Commission notes that while the Appeals Judgement characterized the 1979 Constitution has having been endorsed by the electorate this was not in fact true. The 1979 Constitution was adopted without popular vote.

III. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

79. 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".[9] These principles must guide the Commission's determination of whether the conduct alleged constitutes human rights abuse pursuant to its Act.[10]

80. The reference to "universally recognised 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.[11]

81. 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".[12] Any finding of individual responsibility is to a balance of probabilities standard.[13] 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.

82. The Commission further notes that a persons 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 violation and [offering] sincere apologies to the victim or victims".[14] The Commission considers that

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[9] TRNUC Act, secs. 3(9), 6(8)(a).
[10] *Id.*, section 2(8).
[11] 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".).
[12] *Id.*, sec. 7(b).
[13] *Id.*, sec. 6(8)(c).
[14] TRNUC Act, 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

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.

83. The Commission notes that while each 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.

84. 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 of; 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 persons should not be held to account for conduct that was not criminal at the time it took place.

85. 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.

86. 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

87. 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 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.

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).

88. 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.

89. 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.

90. 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. Unjustified Acquisition of Property

91. The Commission notes that Ms. Shah claimed unjustified acquisition or loss of property for a number of properties, namely: Parcel V479, behind the Coral Strand Hotel, in 1981; Parcel V3810, Ex-Rocco in 1984; Parcel H260, at Mare Anglaise in 1984; and Parcel V5108, Bel Eau in 1986. The Commission notes that these claims correspond with the violation of unjustified acquisition or loss of property under Section 2(8)(h) of the TRNUC Act.[15]

92. At the outset, the Commission considers the required admissibility nexus to the 1977 Coup d'état to be met in relation to these claims. In this regard the Commission notes that the properties were acquired during the one-party State from 1977-1993; as such the primary temporal mandate is met. Further, the Commission notes that it was alleged that the properties were acquired, as a way to harass and victimise those perceived as against the Government.[16] In these circumstances the Commission is satisfied the property rights of the Valabhji's were impacted in furtherance of policies implemented by the administration that had gained power through the Coup d'état. As such, the Commission also considers the thematic mandate to be met.

93. The Commission considers that the violation of unjustified acquisition or loss of property broadly entails 1) the unlawful or arbitrary taking or appropriation 2) of the physical, real, financial, intellectual, or other property or business of one or more persons 3) that results in the deprivation or interference of use of the property or business by that person 4) without adequate, prompt, and effective compensation, 5) by a perpetrator.

i. Parcels V479 and V3810

[15] TRNUC Act, sec. 2(8)(h).
[16] Final Report, Volume ll, Chapter Five, Section 5.3 Land Acquisitions

94. The Commission notes that Parcels V479 and V3810 were acquired in 1983 and 1984, respectively. However, as both were acquired pursuant to court orders, the Commission will deal with the properties' acquisitions together.

95. In consideration of the first element, whether the acquisition of the properties was unlawful or arbitrary, the Commission notes that the properties were claimed by court orders issued against the Valabhjis. In this regard, the Commission recalls the evidence that Mr. Valabhji had been issued a tax bill by the Commissioner of Tax to the extent of SR 3,331,315. The Commission notes that Ms. Shah claimed that the bill was exaggerated as it was unheard of for an individual to earn in the millions, and had Mr. Valabhji not paid his annual tax bills he would not have been able to continue his practice as a lawyer and public notary.

96. The Commission appreciates these claims, however, it is unable to verify the earnings against which the tax debt was assessed and the Commission notes that Mr. Valabhji failed before the Appeals Court in challenging the method of assessment that had been made and the additional tax that was added, presumably as a penalty for the non-payment by the due date. As such, the Commission finds that the legality of the tax bill in and of itself has been settled, and on the balance of probabilities was calculated per the Income Tax Assessment Decree 1978.

97. The Commission recalls that under the Income Tax Assessment Decree 1978, the Controller of Taxes was empowered by section 146 to prevent a person liable to pay tax from leaving Seychelles, or to require that person to furnish sufficient security against their tax debt to the satisfaction of the Controller.[17] In the current case, the Commission notes the extent of the debt due to the Government at the time the Valabhjis left Seychelles, thus when repayments were not made, the Controller was within his power to apply for a Court order to repossess the properties offered as security.

98. In this regard, the Commission finds that in March 1980 Mr. Valabhji had attempted to register a mortgage against Parcel V3810 in favour of the Taxation Office, to the extent of £300,000.[18] The Lands Office undertook a review, and valued V3810 around SR 995,000 in April 1980. The Commission notes that the Controller of Taxes had noted that Mr. Valabhji had offered the Tax Office a mortgage over the properties as security for the outstanding tax bill. The Commission thus accepts that Mr. Valabhji had voluntarily offered the property as security for the amount owed.

99. The Commission finds that Parcel V479 was sold at a judicial sale at the Supreme Court, on 25 November 1983, and Parcel V3810 was registered to the Government of Seychelles by Court Order (Case No. 119/80) due to the failure to re-pay the outstanding taxes. In these circumstances, the Commission finds that as Mr. Valabhji volunteered the mortgages against his properties, the failure to repay the outstanding debts and subsequent acquisition of the two properties was lawful. As such, the Commission is not satisfied that the first element is made out.

100. As the Commission is not satisfied that the first element is made out, it declines to further consider the other elements of the violation and the Commission finds that the Valabhjis did not suffer the violation unjustified acquisition or loss of property under Section 2(8)(h) of the TRNUC Act, in relation to the acquisition of Parcels V479 and V3810.

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[17] Income Tax Assessment Decree, 1978, Decree No. 11 of 1978, sec. 146(4).

[18] The Commission notes that at the time, the exchange rate the proposed mortgage was SR ~4.4 million.

ii. Parcel H260

101. Regarding the first element, a taking which was unlawful or arbitrary, the Commission finds on the balance of probabilities that in October 1984, at the time of the Government acquisition, Mr. Valabhji did not legally own the land in question, Parcel H260. In that regard, the Commission notes that while Mr. Ron Rose informed the Ministry of National Development in 1984 that around 1972/1973 he had sold three acres of land to Mr. Valabhji from the estate of John Jean-Louis, this sale of land was not registered and Mr. Rose was unable to produce any documents at that time verifying the sale and when the Government acquired the land it did so from the estate of John Jean-Louis. The Commission notes that Parcel H260 was not contained on the New Land Registry and understands that the record-keeping process at the Land Registry at the time was often inaccurate, resulting in spelling errors and sometimes lack of records.[19] It considers on that basis that it would not be out of the ordinary for the record of title registration in this case to not have been duly recorded or preserved as it should have been.

102. However, the Commission further notes at the time of the acquisition, all communications went through Mr. Georges René, fiduciary for heirs John Jean-Louis who came to an agreement as to the compensation within a few months of the acquisition even though Mr. Ron Rose had previously advised that the land had been sold to Mr. Valabhji. In this circumstance, if Mr. Valabhji had a claim of action it would be against the heirs of John Jean-Louis and not against the Government as legally the Government did not acquire the property from Mr. Valabhji but from the heirs as the registered owners.

103. As such, the Commission is not convinced on the balance of probabilities that Mr. Valabhji was the owner of the land in question at the time of its acquisition or thereafter.

104. As the Commission is not convinced of Mr. Valabhji did own Parcel H260, it must find that the Valabhjis did not suffer the alleged violation under Section 2(8)(h) of the TRNUC Act in relation to Parcel H260.

iii. Parcel V5108

105. First, in considering the element of unlawfulness or arbitrariness, the Commission is satisfied that on 21 April 1986, the Government compulsorily acquired V5108, The Commission notes that the acquisition of Parcel V5108 was done pursuant to the legal framework in effect at that time, the Lands Acquisition Act, 1977, under which the Minister had an absolute authority to acquire property in the national interest.[20] The Commission notes that the acquisition was purported to be done in the "national interest" for the purpose of developing housing for other Seychellois. The Commission also recalls the

[19] *See, e.g.*, Case Determination No. 004: Patrick Tirant.

[20] Initially, affected property owners were afforded some level of protection in the statute through the right to contest the legality of the acquisition and adequacy of compensation, but following consecutive amendments, the rights providing for judicial review were removed and the method of assessing compensation radically modified. *See* Lands Acquisition Act,1977, Act 10 of 1977, *repealed by* Act 9 of 1996, Part II, 3(1). *See id.*, Part II, 9(1) and (2) (granting courts the powers to make orders for payment/repayment of monies; order discharging obligation to pay monies; order in respect to the rights/liabilities of parties to contract of sale of the land; order altering rent payable or order cancelling lease; order apportioning charge or encumbrance). *See also* Final Report, Lands Acquisition Act.

evidence that the property was subdivided shortly after its acquisition and developed into high density housing, which the Commission accepts could be a legitimate national interest.

106. While the Commission recognises that a State retains sovereign powers that allow for certain compulsory acquisitions to be legal in both domestic and international law, this power as exercised must be justified and non-arbitrary.[21] The Commission affirms here that the absentee landlord policy which only targeted Seychellois living abroad—and likely targeted specific Seychellois who had faced forced exile or political refuge—and the specific broad provisions in the Lands Acquisition Act which removed reviewability and granted expansive power for acquisitions without reasoning, both initiated arbitrary deprivations of property, for which the Government unreasonably interfered with citizen's property rights in violation of human rights principles. Additionally, the Commission affirms that a likely purpose of the absentee landlord policy was the specific intention of the unlawful deprivation of the citizens' right to property, which is a violation of well-recognised human rights principles. The Commission further notes the failure of the Government to pay any compensation at the time of the acquisition as required under the Lands Acquisition Act,[22] is further indicative that the acquisition was unlawful. Thus, the Commission is satisfied that the first element is met.

107. The Commission notes that the Valabhjis were deprived of their real property interests due to the acquisition by the Government, namely, their interest in Parcel V5108, settling the second and third elements of actual deprivation of an interest in the property.

108. The Commission also finds that the fourth element has been satisfied, the acquisition having lacked adequate, prompt, and effective compensation. The Commission finds that the Government did not provide any compensation at the time of acquisition in 1986; it was only nine years later that the Valabhjis received compensation in the form of the first payment of SR 200,000 from the Government on 23 September 1994. The Commission highlights that there was no compensation at all prior to this. The Commission finds that although the negotiations were drawn out, the Valabhjis did receive across four payments, SR 800,000 as full and final payment. In these circumstances, while Commission notes that the Valabhjis were eventually sufficiently compensated for the acquisition of Parcel V5108, this was very late and in contravention of the principle of promptness. As such, the Commission finds on the evidence adduced that the fourth element of a lack of adequate, prompt, and effective compensation is made out.

109. Regarding the perpetrator(s) who bear responsibility for this violation, the Commission finds it established that former President Albert René was responsible for this acquisition. In this regard, the Commission recalls, that the President had the ultimate authority over the takings effectuated by his Government, including final say in any compulsory acquisition and the quantum of compensation paid by his Government. The Commission considers that the other Ministry actors involved in this case were more likely than not merely applying the law in effect at the time, and serving at the pleasure of the President—with their own risks should they refuse an order—in doing so. As such, the Commission accords perpetrator status to President René.

110. The Commission is further satisfied that as the above acts were carried out by the Government, including the President, Ministers, and other officials in the Ministry of Lands in their official capacities as State actors, responsibility for this violation can also be imputed to the State.

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[21] *See* UDHR, art. 17.

[22] Lands Acquisition Act, 1978, Cap 105, Part III.

111. On the basis of the above, the Commission finds on a balance of probabilities that the Valabhjis did suffer the violation of unjustified acquisition or loss of property under Section 2(8)(h) of the TRNUC Act in relation to parcel V5108.

2. Forced Exile

112. The Commission recalls Ms. Shah alleged that she and Mr. Valabhji were forced to leave the country for their own safety, which the Commission notes would amount to the violation of forced exile under Section 2(8)(k) of the TRNUC Act,[23] in violation of their rights to freedom of movement and to re-enter the country.[24]

113. The Commission considers that this violation is sufficiently connected to the Coup d'état so as to satisfy the admissibility criteria.[25] The Commission recalls the evidence above that the couple left Seychelles in 1982, due to fear for their safety. The Commission notes that this occurred during the one-party State from 1977-1993; as such the primary temporal mandate is met. As the events that led to their fleeing from Seychelles were likely due to a perception of not supporting the Government that had taken power with the Coup d'état, the Commission is likewise satisfied that their leaving Seychelles was related to the Coup so as to satisfy its requirement admissibility nexus.

114. The Commission recalls 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.

115. First, the Commission is satisfied that the Valabhjis left Seychelles for the UK in 1982. It further finds that they did not return to the Seychelles until 1992. The Commission finds this period of years spent outside the country to be easily sufficient to constitute actual exile.[26] On this basis, the Commission finds that the first element is met.

116. On the element of unlawfulness or arbitrariness, 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.[27] Although this is not a required element of the violation of forced exile under

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[23] TRNUC Act, sec. 2(8)(k).
[24] UDHR, arts. 9, 13.
[25] TRNUC Act, sec. 2(8).
[26] For the exile to occur, the individual or family in question must have physically left Seychelles for a sufficient period of time that they either do not intend to return or they have the ability or expectation to live in the destination country. The period of time required will depend on a weighing of evidence in each case.
[27] 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).

the TRNUC Act, the Commission considers evidence of asylum or successful refugee claims to be particularly persuasive evidence that a victim suffered unlawful persecution. In this respect, the Commission recalls that Ms. Shah claimed the two of them ultimately received political asylum in the UK in 1982, which it finds corroborates their well-founded fear of persecution in Seychelles. The Commission therefore finds that the second element is met.

117. Regarding the "perpetrator" element, the Commission notes that it has not received sufficient evidence to make a finding as to perpetrator status. However, the Commission notes that the continued persecution at the hands of the Government, or failure of the Government to ensure the couple's human rights, would have been core to a successful claim of asylum, and thus the Commission finds that the present violation was institutional in nature, permitted through one or more Government policies that permitted the behaviour in question, for which the State bears responsibility.

118. On the basis of the above, the Commission finds that the Valabhjis suffered the violation of forced exile under the TRNUC Act, in further contravention of his human rights.

V. RECOMMENDATIONS ON REPARATIONS

119. On the basis of the above findings, the Commission recommends reparations in accordance with its Reparations Policy for the violations as laid out above.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

120. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 030.

121. 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

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner