Persévérance, Mahé, Seychelles
Tel: +2484290399 Email: commission@trnuc.sc Website: www.trnuc.sc
P.O Box 5013, Beau Vallon

Case No: 049

The Truth, Reconciliation and National Unity Commission

Reconsideration of the Determination of the Complaint of Hester Sylvia Gresle

31 March 2023

Reconsideration of the Determination on the Complaint of Hester Sylvia Gresle

Complainant:

Hester Sylvia Gresle

1. Pursuant to the Case Determination Policy of the Commission ("Commission Policy") issued on 12 August 2022, complainants are authorised to attend at the premises of the Commission to read their final determinations. The Commission Policy authorising this practice seeks to promote transparency in the work of the Commission as required under Section 3(8) of the Truth, Reconciliation and National Unity Act ("TRNUC" Act). and freedom to information, while also respecting the authority of the President under the TRNUC Act. In this respect, the Commission is mindful that pursuant to Section 11(1) of the TRNUC Act the Commissions' findings and decisions are to be submitted to the President and it is the President under Section 11(4) who shall make the final report of the Commission public.

2. The conditions under which the Commission will amend a final determination upon a complainant's review are clearly set out in Section 2 of the Commission Policy, which states as follows:

> Due to a lack of resources, case determinations have been prepared largely by reference to the handwritten notes of the Chairperson as checked and verified by the National Commissioners. Most of the evidence received by the Commission was given in Creole and the Chairperson in making her notes relied upon the English translation, which may lead to differences in the words spoken and the translation given.
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> As a matter of policy, once a case determination has been agreed by the National Commissioners that case determination will not be revisited to make editorial changes at the request of a complainant. That case determination is considered final.
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> The only exception to considering a case determination final is where the change requested by the complainant has been verified by the record of the hearing as accurate by an investigator and the implementation of that change would impact substantively on the findings of the Commission.

2. On Friday, 30 September 2022, Mrs. Gresle visited the Commission premises to read her case determination which had been finalised by the Commission on 17 August 2022. Following the review of her case determination, Mrs. Gresle sought the Commission review of certain findings that had been made by the Commission on the grounds that those findings were erroneous and that the Commission had made substantive errors in the determination of her case. Mrs. Gresle first sought to express her concerns in a letter to the Commission addressed to the attention of Commissioner Green, dated 3 October 2022. During the week of 17 October 2022 Mrs. Gresle and her husband met with Mr. Green to further express these concerns. As this communication was not presented to the other Commissioners no action was taken by the Commission.

3. On 6 December 2022, Mrs. Gresle again sought to petition the Commission for substantive amendments to her final determination this time through the direct petitioning of Commissioner Archbishop Wong in which she repeated the concerns already expressed and set out in her letter. Following that petitioning, the letter of 3 October 2022 was shared with the Commissioners who thereafter sought to review the final determination in Mrs. Gresle's case pursuant to the Commission Policy to ascertain whether a substantive error had been made by the Commission by reference to the submissions she made.

4. In her letter of 3 October 2022, Mrs. Gresle makes extensive reference to a report compiled in this case by Mr. Gerard Hoareau from the Ministry of Lands but also made comment on other

findings of the Commission. With respect to the report of Mr. Hoareau Mrs. Gresle submitted as follows:

> I would first like to comment on Mr. Hoareau's report, as it contains inaccuracies and contentious remarks, bordering on defamation of character. I also believe that the TRNUC could not have read this report as it contradicts various aspects of their deliberations. Mr. Hoareau from the very beginning, has been obstructive and disingenuous concerning my dealings with the Land Ministry, which is probably not surprising, as he was a servant of the previous corrupt government. My comments concerning his report are detailed below:

Case 1

- Mr. Hoareau claims that I asserted that our family property was compulsorily purchased by the government. I have never claimed that, only that I sold, under duress, at a very low price to the government. I only did so because the British/Australian? Seychelles government surveyor advised (sic) me to do so otherwise, according to him, the government would compulsorily purchase the property at an even lower price.
- Mr. Hoareau further asserts that there was (sic) later "reviews" and an "ex-land Tribunal" that I could have taken my case to and because I did not, it intimates that I accepted that I was given a fair price. I was not living in Seychelles at that time and had absolutely no knowledge of any such procedures. It should be noted that when I was approached by the government to sell the property, I requested a much higher price, this is accepted in Mr. Hoareau's report.

Case 2

- Mr. Hoareau insinuates that the Gresle's sub-divided and sold for gain a number of parcels of land and that they are therefore responsible for providing and maintaining access roads to those properties. In fact, only three parcels were disposed of by the Gresle's. One was given, free of charge, to Mr. Antoine Mondon, who was an employee of the Gresle's. Two other parcels were sold for a minimal price to acquaintances of the Gresle family.
- The government acquired the Gresle property under the pretense that it was required for a youth center, or to at least gain access to such a center. This was never built, according to Mr. Hoareau, because the Government realized that such a facility should not be built in a residential area. This raises further questions. It means that (1) the area, including the Gresle properties, were already zoned for residential use. (2) Presumably, the planning authority could have told "the government" it would not be acceptable for such use, before the land was purchased? The fact that the government later sub-divided the property and sold it off, mainly to their friends and connections at a low price, should indicate that the purchase and resale was corrupt.

Case 3

- Mr. Hoareau concedes that I am the executrix of the property. He then makes the odd remark that there is no proof that I own the land "solely". I have never claimed that I do, as the property has been inherited by the Gresle family, that is, myself and my three children.
- His comments further imply that I may be acting nefariously when it comes to the disposal of the property. This further implies that I would cheat my own children out of their inheritance. As a matter of fact, my three children have given me full power of attorney to act in their interests.

[...]

Case 4 Unjustified Acquisition or Loss of Property or Business

- You conclude that I have no case and that the property changed hands on a "willing seller, willing buyer" basis. As alluded in my comments on Mr. Hoareau's report, I believe you have made a fundamental error in your conclusions.
- Your deliberation states that I approached the government to purchase the property. Mr. Hoareau's report clearly states that the government approached me, no less than three times, which must be a sign of their eagerness to acquire the property.
- Mr. Hoareau's report also accepts that I asked for a much higher sum than they agreed to pay.
- I was given a disingenuous reason for the government wanting to acquire the property. A reason that they calculated would appeal to my sense of civic duty, a facility for troubled boys and young men.
- Mr. Hoareau then claims that the facility could not be built because it would be a residential area. This is quite ridiculous as why would they have not realized this prior to purchase.
- The land was subsequently sub-divided and sold off by the government, in the main, to their friends, colleagues and relations at a very low price. If this does not constitute a level of corruption in the acquisition and subsequent resale of my property then I do not know what would.

5. With respect to other findings of the Commission Mrs. Gresle submitted as follows:

Mr. Barry Faure

- In your deliberations you conclude that there was nothing suspect or illegal in the transfer of the old home to Mr. Faure. This maybe the case in law, or maybe not? You appear to have missed, or ignored the fact that the letter written to the Land Ministry, by Mr. Faure asking to purchase the property, was written on National Assembly headed paper. At that time Mr. Faure was both an MNA and a government minister, so surely this indicates that Mr. Faure was abusing his position.
- You do not appear to have taken into account that Mr. Faure bought the property for only SCR 503.000.00. The land area is approximately one acre and the house is a 600m2, rock walled, master-built house on six levels. It is true that the interior required renovation but the cost of building such a house today, would be prohibitive.

  Finally, I accept that the Desert property and the roads issue do not fall under your mandate but my comments on Mr. Hoareau's report, concerning these properties, serve to indicate the general bias against me, shown by Mr. Hoareau and by implication the Ministry of Land and the government.

6. The Commission notes at the outset that its mandate is to determine the veracity of allegations of human rights violations as set out in its Act. In that respect, an allegation of corruption on the part of Government is not a matter that falls within the mandate of the Commission unless that allegation can be shown to be inextricably linked to the human rights violation alleged. In this case, the alleged violation is the unjustified acquisition of the property of Mrs. Gresle through a sale under duress that took place in March 1998. The Commission finds that the fact that the land was subsequently sub-divided and sold off by the government, allegedly "in the main, to their friends, colleagues and relations at a very low-price" many years after the acquisition is irrelevant to Mrs. Gresle's claim of duress vitiating the legality of the sale. More specifically the sale of part of that property in 2008 to a person strongly associated with the Government has no relevance whatsoever to whether the original acquisition of property from Mrs. Gresle constituted a human rights violation and was unlawful. In that respect, Mrs. Gresle's reliance upon allegations of corruption or abuse of office by the Government and Mr. Faure in particular in support of her claim of sale under duress is misplaced.

7. The Commission notes that most of the complaints made by Mrs. Gresle against the substantive finding of the Commission are directed at the report prepared by Mr. Gerard Hoareau in relation to her case. The Commission here underscores that it is clear from the determination of the Commission that the report of Mr. Hoareau was not relied on by the Commission at all in reaching its determination. The Commission notes in that regard that Mr. Hoareau did not appear before it to give any evidence but provided a report in writing that represented Mr. Hoareau's summary of the land file in this case. When the Commission sought to call Patrick Lablache to give evidence in this case it was referred to the report prepared by Mr. Hoareau but no reference whatsoever is made to the evidence of Mr. Hoareau in the determination of the Commission.[1] In that respect, to ensure the independent consideration by the Commission of Mrs. Gresle's land claim, the Commission had accessed and reviewed the land file in this case for itself and relied on the evidence given by Mrs. Gresle herself before the Commission during her appearance on 4 November 2019.[2]

8. The Commission recalls that during that appearance the relevant evidence of Mrs. Gresle was as follows:

> [...]so, in 1998 so I had been trying very hard to hold on to this place, especially for my Son I arrive don't he property and there was a letter from the Government. Now it seems to me that they never, ever – everyone knew that I left – they never, ever that enquire where I was, the letter was just handed there and left there. And Antoine picked it up and Antoine handed me the letter, and it was addressed to me and it was from the Government. They wanted to have access because they wanted to put up a home for trouble boys, and they needed the road access. I did hear that if nobody answers these letters which they leave there, that they then confiscate the property because they would say the property was being abandoned. So fortunately, I was there to receive the letter and I decided to speak to them, and I spoke to an English Surveyor man and I cannot remember his name, obviously that is a long time ago. Who worked for the Government he came to see the property, he saw the house he said "its beautiful house, even in its state of decade now" because it is still solid. And he advised me I said to him "I am putting children through education, I do not have the means actually to come back and forth like that, I just cannot deal with it anymore" He said "it is better for you to offer it, sell it to them". So, I broke my promise.
>
> So, I went and I asked them to make me an offer, what they offered not these 50 acres with a really, really exquisite very, very fantastic house. But the house I do not know what the worth of it is by now, I said to them "what do you offer me" and they said they will offer me 3.5 million and they want to pay it over a year that was in rupees. And that was in the time where we couldn't get forex out of the Country, you could only take $200 at that time. So, I said well maybe I can get lucky and that is better than nothing so okay I will take that, but they did actually agree to give me SCR200,000/- rent which came in very welcome, because at that point as I said you know the school fees, the Universities fees just levy. I had just started working as well, so because I couldn't take it out. I actually did go to Nouvobanq I asked them please – because the money was at Nouvobanq – "please could you make an exception to the rule, because I am not living here anymore" and they said "no, there is nothing available you have to go to the President". I write a letter to the President office and I had a reply from his secretary and she just said "Mr Rene said you must speak to the Bank" – so the bank said to speak to Mr Rene, and Mr Rene said speak to the bank now I do not know who should I speak to anymore. So, the money stayed there,

[1] See para. 118 of Case Determination Hester Gresle
[2] Hearing No. XX of Monday, 4 November 2019.

> they paid over 1 year I said that is okay, so we have a bit of interest which was another SCR500,000/- and that was in the bank there.
>
> So, I couldn't take anything out, but I did pay for my son wedding here in Seychelles, I paid for my daughters who got married in Johannesburg I paid for her honeymoon here. I paid for a few holidays when we came, took me 5 years to get my eldest daughter to come back here she wouldn't put her foot here. But finally, the year 2000 she did actually come back, that was that. I wanted to start doing Physiotherapy in Johannesburg I had worked in Paraguana Hospital when I first started, and I knew the Physio there and she said "Sylvia you can come immediately" but I knew they do not pay very well. And there was no way that I could actually educate 3 children with that, so eventually I did go and work for a group of Estate Agents Brimax, and I actually did all the exams and I became a Property Broker under my own – because you can actually work for yourself. And they do not take half of your commission, so and I worked in a very good area and that kept me going I must say, it was very good so I managed to educate my children very well. And that was the most important thing for me that was all I was interested in, to educate them.
>
> I had to go to Court and I was the lawyer Mr Anthony Derjacques he was in Court, and they agreed because I was the Executrix, and I was not really supposed – according to the Will it had to be divided equally in 4 between myself and my 3 children. But my children agreed because they saw where they was going, although my son is actually torned – I must tell you he is torned about this property. He has been dreaming to buy it back, but I do not think that will never happen he will not be able to afford it now -. So, any way we got the permission to sell it, and so that was the end of the property. Form the moment they bought it in 1997-1998 you will see if you look at the deeds and everything, it was left there, there was nothing happening. The boys home never happened, nothing happened it was just laying there and then eventually they started to subdivide the property. And they had the very nice ones which had been behind my house, with beautiful Anse Royale sea views, mountain views, beautiful property really beautiful. Mr Barry Faure has got my house, and he built another house at the back of that one, I do not know exactly the people who owned the lovely properties behind my house. But I can tell you that it is huge beautiful mansions that is going up there.[3]

9. The Commission notes that in this request for reconsideration, Mrs. Gresle claims that the report of Mr. Hoareau established that it was the Government who approached her three times for the property and therefore that shows their eagerness of purchase and that the Commission committed a fundamental error by not relying on Mr. Hoareau's evidence in its determination to find the presence of duress. The Commission also notes that Mrs. Gresle further seeks to rely on the claim she was induced to sell property because she was told that it would be used as a home for boys and that this never happened rendering that representation false and deliberately so as Government would have known the area was already zoned residential.

10. The relevant evidence Mrs. Gresle relied on from Mr. Hoareau's report is as follows:

> Undated The Ministry writes to Mrs. Hester Sylvia Gresle of Anse Royale and makes a request for her to call at the Land and Survey Division on Wednesday 24th September 1997 between 1.30 - 3.00 pm to see the Director General (Lands and Surveys). Exhibit 5-copy of folio 9 from Lands File LAU/M/40/96
> [...]
> 25.11.97 The Ministry sends a FAX (No. 027 11 7060 037) to Mrs. Hester Sylvia Gresle who apparently was in South Africa and informs her that "Government would like to negotiate **an access across** her property at Anse Royale to its property further inland intended for a development project". The FAX requests for Mrs. Gresle to let the Ministry know the name of

[3] The Commission notes this is the evidence of the official transcript of the Commission dated 4 November 2019.

her representative in Seychelles so that it can proceed with the matter or alternatively how she would wish to communicate with the Ministry over the issue. Exhibit 7-copy of folio 12 from Lands File LAU/M/40/96

07.01.98 The Ministry sends another (reminder) FAX to Mrs. Hester Sylvia Gresle and makes reference to the first FAX and gratefully requests for a reply. Exhibit 8 -copy of folio 13 from Lands File LAU/M/40/96

05.02.98 The Ministry sends another FAX to Mrs. Gresle and requests to receive her asking price for the sale of property at Anse Royale so that purchase can be further considered. She was informed that the Director of Lands (Mr. Brian Moodycliffe) will follow up on the request. Exhibit 10 -copy of folio 16 from Lands File LAU/M/40/96.

11. The Commission notes that a majority of the Commissioners agree with Mrs. Gresle's submission and are satisfied that Mr. Hoareau's evidence that the Government approached Mrs. Gresle three times, based on the records on the lands file, should have been addressed by the Commission in its determination and Mrs. Gresle's claim to have approached the Government herself, relied upon in the determination represented "an erroneous assumption" made by the Commission. The majority of the Commission also claim that Mrs. Gresle refused to sell her property in response to the three approaches made to her. According to the majority of the Commissioners, this fundamental error of the Commission of non-reliance upon the three approaches and her refusal to sell on each approach is sufficient to overturn the Commission finding that the sale was on the basis of willing seller and buyer and to find that the sale was in fact a sale under duress. In this respect, the majority find that the sale was unlawful, that as a result of the unlawful sale Mrs. Gresle was deprived of her real property interests in the parcel and its use and enjoyment and that she never received adequate prompt and effective compensation for the acquisition.

12. The Commission notes that the Chairperson dissents from this majority view and maintains the original decision of the Commission. In so doing the Chairperson recalls the Commissions rejection of the evidentiary value of the report of Mr. Hoareau, which was not given under oath, that rejection being largely consistent with the position of Mrs. Gresle in her request for reconsideration that that report should not be relied on. Instead, the Chairperson relies on the evidence of the land file as set out in the original decision – which includes evidence of the three approaches made by Government and referred to by Mr. Hoareau in paragraphs 96 and 97 of the determination. In that respect, the Chairperson notes that the three initial approaches to Mrs. Gresle were in relation to the Government's desire to negotiate for access across her property and that it was Mrs. Gresle's non-response that led to the third approach in contrast to a situation where Mrs. Gresle was from the first approach in fact being harassed by the Government to sell her property to it. The Chairperson notes that the interest of Government was in relation to access is borne out by the documents on the land file. For example, Minute 4 addressed to PS(CD) from the Director General (L&S) dated 10 September 1997:

(1)-(7) refers.
We visited the sire at Anse Royale on Saturday 6th September 1997 in the company of the Principal Secretary for the Ministry of Employment and Social Services DPP, Mr. Zoe LUPU, Mr. Praille and others.
The following was proposed:

(1) that a site of 1.5 hectares in extent as shown in blue at folio (5) would be allocated to Ministry of Employment and Social Affairs for the Juvenile Centre.
(2) that negotiations take place with Mrs. Gresle, the owner of the drive shown in green at (5) for
(a) Access widening and upgrading of the existing drive for use by the center
(b) Acquisition of the strip of land whose approximate alignment is shown in red at (5) for completion of motorable access to the proposed center.

13. The Commission notes that Minute 4 also reports that the access referred would run through 4 other private properties and that negotiations would have to be had with these owners also.

14. That this was the Government's initial interest in the land is further confirmed at Minute 15, recorded after the agreement of Mrs. Gresle to sell, addressed to MCD from PSCD dated 18 March 1997:

> I have seen Mrs. Gresle in order to follow up on Min. 14 and in particular the rate of interest proposed at 14 1/2 %.
> We have already made a concession to pay Rands 200,000 as an exceptional case, given that this was a determining factor in the negotiation – need to secure access to the proposed juvenile center.

15. On the evidence adduced, the Chairperson cannot agree with the finding of the majority that Mrs. Gresle refused to sell her property to Government on three occasions, there is simply no such evidence in support of that finding in the land file and nor in the evidence given before the Commission by Mrs. Gresle. Further, the Chairperson cannot accept that the three approaches of Government – which the records indicate in fact remained unanswered by Mrs. Gresle - constitute evidence of duress.[4]

16. The Chairperson further notes that Mrs. Gresle made no submission in her appearance before the Commission that the Government's representations as to the use of the property persuaded her to sell. Her evidence was that the Government interest in her property was in road access for a boy's home – which is consistent with the evidence of the initial approaches made by Government recorded on the land file– not that her property would be used for a boy's home. In her request for reconsideration Mrs. Gresle alleges that she was "given a disingenuous reason for the government wanting to acquire the property. A reason that they calculated would appeal to my sense of civic duty, a facility for troubled boys and young men." The Chairperson is satisfied that the land file supports that road access for a Juvenille Centre was the actual representation made by Government to Mrs. Gresle on initial approach. Further, the Chairperson finds at the time of the negotiations for sale there is no evidence of mala fides on the part of Government who had intended to build a Juvenile Home on the site identified and to use the part of the property purchased from Mrs. Gresle for the purposes to ensure access to that site. Indeed, records on the land file establish that it was not until December 2000 that a decision was taken to look for an alternative site for the Juvenile Centre.[5]

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[4] The Chairperson notes in that regard the evidence given by Mrs. Gresle during her appearance that her first knowledge of the interest of Government in part of her property for road access was when she was handed a letter to that effect by Antoine Mondon when in Seychelles.

[5] See LAU/M/40/96 letter of 20 December 2000 to the Principal Secretary, Ministry of Social Affairs and Manpower Development from the Director of Land Management, for the Principal Secretary.

17. In light of the evidence and the Chairperson's best assessment of it, while sympathetic to Mrs. Gresle's circumstances at the time of the sale, the Chairperson is not satisfied that it is more likely than not that Mrs. Gresle was placed under duress by the Government and coerced to sell her property to it. In this regard, the Chairperson highlights that a person being in dire financial circumstances and agreeing to sell in an attempt to improve their financial position does not amount to coercion to sell. Indeed, it is not clear from the land file how the negotiations proceeded from access of the land owned by Mrs. Gresle to the purchase of the land from her. In that regard, the Chairperson refers to Mrs. Gresle's evidence before the Commission that she could not afford to come to Seychelles all the time to check on her property, that she could not take it anymore and her main concern was having sufficient funds to educate her children and that she had, after talking to the British surveyor, made up her mind to break her promise to her husband and sell the property. As such the Chairperson considers it more likely than not that the change from Government access over part of the property to purchase of the whole of Mrs. Gresle's property more likely than not resulted from Mrs. Gresle's decision to sell and her communication of that to Government. This is consistent with her sworn evidence at trial that she asked Government to make her an offer to purchase the property. It is also supported by the documents on the land file. The Chairperson in that respect refers to the letter dated 5 February 1998, from the Director General (Land and Survey) addressed to Mrs. Gresle which stated as follows:

> Sale of Property at Anse Royale
> I refer to the above matter and regret to have not been able to be in contact earlier.
> I would be grateful to receive your asking price by return fax today so that the purchase can be further considered.
> As I will be away next week, Mr. Brian Moodycliffe the Director of Lands will follow up.

18. The Chairperson further notes correspondence dated 24 March 1998 from the Principal Secretary of Lands to Mrs. Gresle in which the Principal Secretary stated that he was "pleased to inform" Mrs. Gresle "that approval has been given for Government to purchase the properties at Anse Royale". The Chairperson considers this correspondence indicative that it was Mrs. Gresle who sought to sell her properties to Government and not the Government that had first sought to acquire the properties from her.

19. Additionally, the Chairperson recalls that in determining to sell Mrs. Gresle's evidence was that she did not know what the property was worth. When the Ministry of Lands requested her sale price, she asked for SR 8,231,500 for the property, - but there is no evidence that she relied upon a valuation report in coming to that figure and believed that that was the true value of the property at the time. The Chairperson also notes that the land file shows that Government had valued the property at SR 2.7 million. Consequently, the Government's response to Mrs. Gresle was that her asking price was much higher than the valuation of Government and this was true in fact.

20. While the Chairperson accepts that Government may have valued the property at less than true market value there is nothing on the land file to suggest that Government intended to acquire the land from Mrs. Gresle should she refuse to sell at the price Government was willing to pay. The Chairperson further recalls that these events did not take place during the one-party State when land was liable to acquisition in the national interest with no avenues for redress but in

1998 when that Act had been repealed and replaced with the Acquisition of Land in the Public Interest Act and the right to property was protected under the provisions of the 1993 Constitution. In that regard, the Chairperson notes that the only actual public interest the Government had was in a portion of the land owned by Mrs. Gresle it required for road widening and motorable access. Government would have had no legal basis to acquire the whole of Mrs. Gresle's property under the Acquisition of Land in the Public Interest Act, 1996 for that identified public interest.

21. The Chairperson notes in that regard that when Mrs. Gresle was asked for her lowest sale price for the properties, the land file evidences that she informed the Director of Lands that she would come to Seychelles to discuss the matter. Documents on the land file thereafter record an agreement being reached of a sale price of SR 3,650,000 with Mrs. Gresle, later increased to SR 3,700,000, until Mrs. Gresle agreed to reduce that agreed sale price by SR 200,000 when it was discovered that she had previously sold part of the land being purchased. The fact that Mrs. Gresle through negotiations was paid over a third more than Government had initially valued the property and was able to condition her agreement on some of the payment in rand as indicated in para.13 above "this was a determining factor in the negotiation" indicates to the Chairperson that Mrs. Gresle had negotiating power, which the Chairperson considers inconsistent with a claim of duress. Notably, the Chairperson recalls that the Commission received no evidence to show that in fact the sale price paid by Government was grossly inadequate at the time.[6] While the Chairperson finds no evidence of duress in the sale, as the Chairperson is the minority, the finding of the Commission concerning the unjustified acquisition of property of Mrs. Gresle as set out in paras. 151 to 154 is overturned and the majority of the Commission finds that Mrs. Gresle's complaint of unjustified acquisition of property is made out.

22. The Commission further recalls that in her petition for reconsideration in relation to what she identifies as "Case 1. Victimisation by the SPDF" Mrs. Gresle comments "You conclude that the physical abuse suffered by my late husband was not sufficient to warrant any further action".

23. While Mrs. Gresle made no claim of a fundamental substantive error by the Commission a majority of the Commissioners' *propio motu* expressed disagreement with the statement that a punch in the face is not a severe assault, asserting that there is also the "Right to dignity" which is embedded in the preamble to the Universal Declaration of Human Rights and contended that a "punch in the face coupled with the threat to have one's brain blown out " is a violation of the Right to Dignity and that the Commission has taken the position that it is not only the Violations defined in the Act which should be considered, but also Customary Principles of Human Rights.

24. While the majority position which finds that Mr. Gresle suffered a violation of the right to dignity by the assault seeks to overturn the Commission finding that no human right violation was established, the Chairperson dissents from this view. In disagreeing with the majority of the Commissioners the Chairperson recalls that its mandate is as set out under its establishing Act and that the offences there identified are underpinned by the violation of human rights

[6] The Chairperson notes that in the order of Judge Perera dated 31 July 1998 granting Mrs. Gresle authorization to sell following her petition the Judge stated "Being satisfied that the offer made by the Government is reasonable, the executrix is hereby authorized to sell the parcels of land by private treaty".

principles, including those set out in the Universal Declaration of Human Rights and customary international law. In that regard, and following the consistent practice of the Commission in all other cases, acts such as that suffered by Mr. Gresle are to be considered under the category of Section 2(8)(m) of the TRNUC Act as "other acts of a similar character causing suffering or injury to body or to mental or physical health". The Chairperson considers that for an alleged human rights violation to fall within this category it must be an "act of a similar character" to the other offences listed under the Act. This is clear from the plain wording of the provision in the TRNUC Act. While the Chairperson accepts that a punch in the face coupled with a threat would be distressing, she retains the position expressed in the original draft that the level of severity is not satisfied in this case so as to constitute the human rights violation of other acts of a similar character under Section 2(8)(m) of the TRNUC Act. In that regard, the Chairperson dissents from the view of the majority that the right to dignity constitutes a separate violation under the TRNUC Act.

25. In light of the position of the majority, paragraphs 124 and 125 of the original determination are overturned and the majority of the Commission finds a human rights violation established in relation to the assault on Mr. Gresle.

On this 31 March 2023

The Commission

Gabrielle McIntyre, Chairperson

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner