TRUTH, RECONCILIATION
AND NATIONAL UNITY COMMISSION

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Case No: 054

The Truth, Reconciliation and National Unity Commission

In the Complaint of Marie Jessy Mona Souyave

31 December 2022

Determination on the Complaint of Marie Jessy Mona Souyave

Complainant:

Marie Jessy Mona Souyave

I. ADMISSIBILITY

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

2. Prior to the investigation of a complaint, pursuant to Rule 25(1) of the Commission's Rules of Procedure and Evidence ("Rules"), 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.

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 Ms. Marie Jessy Mona Souyave, who brings her complaint as a victim, was received by the Commission on 18 August 2019.[2] Consequently, Ms. Souyave's complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Further, 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. The requirement that a complaint be related to the Coup d'état of 1977 requires the Commission to establish that there is an alleged connection between the allegation and the Coup d'état of 1977. Pursuant to Rule 25(2) of the Rules, a complaint "[...] will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission". The threshold for admissibility to be granted is low, though a complaint deemed by the Commission to be admissible may later be deemed inadmissible following investigation.

6. In her complaint, Ms. Marie Jessy Mona Souyave alleged unjustified acquisition of property on politically motivated grounds in 1984 and abuse of Government office in negotiating compensation with her late husband, Sir George Souyave, by placing him under duress and placing conditions on the return of other parcels of land acquired. From the evidence received, the Commission also considers

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

[2] The Commission notes that Ms. Souyave filed a second case with the Commission, originally identified as Case 276. The latter case, which concerned the acquisition of St. Pierre Island, Praslin, was withdrawn by Ms. Souyave.

that the facts support the violation of forced exile with respect to Ms. Souyave's son, Armand Souyave, and has analysed that violation herein as well.

II. PROCEDURAL HISTORY

7. Satisfied that Ms. Souyave's complaint prima facie alleged violations related to the Coup d'état of 1977, the Commission rendered her complaint admissible on 13 September 2019.

8. On 2 March 2020, the Commission began hearing evidence in the case of Ms. Souyave.[3] The Commission heard evidence from two (2) witnesses.

III. EVIDENCE RECEIVED

A. Evidence of Marie Jessy Souyave

9. Due to the complainant's age, Ms. Souyave was represented before the Commission by her son, Armand Souyave, but she filed a statement in support of her complaint, dated 2 October 2019. Ms. Souyave stated as follows:

> In summary, following the 1977 Coup D'état the Seychelles Government (SG) on 9th February 1984, compulsorily acquired "in the national interest" all of the properties owned by my late husband the late Sir Georges Souyave, at Praslin, namely PR6, PR95 and PR96.
> PR 1757 is a farm of about 5 acres which the SG subdivided from parent parcel PR96. Whilst all the above properties were in October 1994 returned to Sir Georges Souyave, the SG refused to return the farm (PR1757).
> After compulsorily acquiring the farm (PR 1757) which was owned by the family for about 100 years, the SG went on to lease it to Mr. Andre Bonnelame, a staunch SPUP supporter and a brother of a Minister.
> The compulsory acquisition was under false pretences. The SG claimed that it was done in the national interest when clearly it was a malicious and a gross abuse of power on its part.
> Sir Georges Souyave's rights had been abused and even the negotiations which took place following the Third Republic in 1994 were under duress and unequal terms. He had no choice in the matter – he had been told in no uncertain terms that either he accepted the offer where SG kept the farm, or the SG would not return the rest of the lands back.

10. On 8 January 2020, Ms. Souyave provided the Commission with an additional statement, in which she provided additional information concerning her complaint. In that statement, she stated as follows:

> [...] Before and after the Third Republic, negotiations occurred between Seychelles Government and my late husband for the return of ALL his lands compulsorily acquired.
> The Seychelles Government unfairly refused to return ALL of his Land Parcels PR95 and PR96 compulsorily acquired.
> In the correspondence between the parties at the time, it was clearly stated that:
> (a) The Seychelles Government would retain the farm/piggery which was mainly on PR96 and Part of PR95. Indeed, it did retain by duress about 5 acres of the farm/piggery (now identified as PR1757). This claim for the return of PR1757 is already before the Commission: TRNUC 54
> (b) That on the return of the rest of his lands, my late husband grants the Seychelles Government **a 3 meter road across from the Main Public Road to the farm/piggery (now**

[3] Hearing No.51 of Monday 2 March 2020: Armand Souyave; Hearing 51 Monday March 02 2020 Bernard Georges.

PR1757) along and inside the boundary of PR95. This clearly meant giving the Seychelles Government a right of way over land to be returned to him.
(c) That he also grants the Seychelles Government a right to draw water from a reservoir on top of the hill on Parcel PR95.
It was discovered only recently that after PR95 and PR96 were subdivided, the Seychelles Government in fact kept part of the 3 meter road access. This was never the intention of the parties.
The part of the 3 meter road access which was not returned has now been identified as PR1759.
The Heirs of the late Sir George Souyave seek the return of PR 1759.

11. The Commission therefore notes that the present case is in reference to Parcels PR1757 and PR1759, the Souyave family's goal is the return of both parcels.

B. Evidence of Armand Souyave

12. Mr. Armand Souyave, the son of Ms. Souyave, provided evidence to the Commission, in support of his mother's complaint, that the acquisition was maliciously motivated and that his father was treated unfairly in the negotiations for compensation and for the return of the acquired properties.

13. Mr. Souyave started by providing context as to the time period and his personal background. He advised the Commission that in late September 1975, he completed his A levels and proceeded to the United Kingdom to study law at Kings College London. The Bachelor of Laws (LL.B.) course he followed was three years and would be followed by a year at the Council of Legal Education and Bar Finals. He said he was privileged to have obtained a British Council scholarship, through which he was bonded to the Seychelles Government to return to work in Seychelles after he had completed his studies.

14. Mr. Souyave was about to sit for his second-year exams when the Coup d'état took place on 5 June 1977. He stated that he was devastated by the event, the violence, and the abuses of human rights that followed it. During the summer holidays, he was unable to return to Seychelles because of the political situation, and he received information that his family was not welcome in Seychelles. So, he stayed in the UK.

15. At the beginning of 1979, Mr. Souyave approached the British Council in the UK and requested an extension of his scholarship and funding for a year's pupillage in London. He was due to take his final bar exam in July. The British Council agreed, and Mr. Souyave understood that he would be required to return to Seychelles in the summer of 1980.

16. Mr. Souyave was admitted as a barrister and called to the Bar of England and Wales on 26 July 1979. Knowing that he was bonded to return to Seychelles by July 1980, he decided to visit in late August 1979 before he began his pupillage in the UK. He was accompanied back to Seychelles by his brother, as well as their respective girlfriends.

17. Mr. Souyave recalled that during their three-week stay in Seychelles, they were watched and followed everywhere they went by State Security.

18. Mr. Souyave decided that he would go and see President René. He stated that he had known Mr. René's Principal Secretary for years, so he requested an appointment through the Principal Secretary. Mr. Souyave stated that he wanted to ascertain from President René whether he would be welcome in

Seychelles and his safety guaranteed once he returned to honour his bond. President René declined to see him.

19. Mr. Souyave recalled that a few days before his departure from Seychelles for the UK, he was summoned by a Mr. Ian Mackinson from the Ministry of Education. Mr. Souyave claimed that when he saw him, Mr. Mackinson told him that the Seychelles Government needed his services, and he should begin work as soon as possible. In that regard, Mr. Mackinson told him that if he needed to do a pupillage, he should do it in Seychelles. Mr. Souyave explained to Mr. Mackinson that the British Council had extended his scholarship and had already arranged pupillage with Alan Jones, a senior counsel at the time, and had also rented accommodation for the year in the UK. Mr. Souyave claimed that Mr. Mackinson told him that the orders "came from above", which he understood to mean from President René. Mr. Mackinson directed Mr. Souyave to cut short anything he was doing in the UK and to return to Seychelles to honour his bond. Mr. Souyave feared that he would be prevented from leaving the country, and he informed Mr. Mackinson that he would consider the instruction given to him and go back to the UK to sort things out.

20. Mr. Souyave advised the Commission that once he was back in London, he consulted the British Council and his family members as to what he should do. The British Council were not aware of any demand by Seychelles that he return immediately, and his family was against him doing so. He therefore began his pupillage in the UK.

21. Just a few weeks later, Mr. Souyave received news of the multiple arrests and detentions without trial in Seychelles. Mr. Souyave advised the Commission that most of the detainees were well-known to him, including a well-known lawyer who was related to his mother. Mr. Souyave then made the decision that he would not return to Seychelles in the near future. He believed that his safety was not guaranteed, and it was clear to him that President René had unfairly and maliciously ordered him to return prematurely.

22. A short time later, in early October 1979, the British Council wrote to Mr. Souyave and advised him that with regret, they had been instructed to ask that he return to Seychelles immediately. He was informed that his grant for his pupillage would be withdrawn with immediate effect upon the instruction of the Seychelles Government. Mr. Souyave recalled an exchange of letters between himself on the one hand and the Seychelles Government and British Council on the other relating to what he considered to be a breach of contract on their part.

23. At the time, Mr. Souyave stated that he was also concerned about his immigration status in the UK. Through his father and his contacts at the Foreign and Commonwealth Office, he was given verbal reassurance that he would not be forced out of the UK. He therefore continued with his pupillage and undertook part-time work to support himself.

24. After the pupillage, Mr. Souyave remained in the UK and practiced from the same chamber until mid 1981, when he moved to Hong Kong and practiced as a barrister there. He continued to live and practice in Hong Kong until his retirement a few years ago.

25. Mr. Souyave informed the Commission that his father was the last Chief Justice (1970 to 1976) in Seychelles when it was under British Colonial administration before Independence. Mr. Souyave claimed that his father foresaw political upheaval in Seychelles after Independence. His father was

also unhappy with the unwarranted personal criticism made against him, mainly by then SPUP opposition supporters, following the trial and conviction of Guy Pool, a staunch SPUP supporter, who was tried in reference to placing a bomb at the Reef Hotel. Mr. Souyave recalled that his father sentenced Mr. Pool to 12 years' imprisonment. Mr. Souyave claimed that René was mentioned in Mr. Pool's confession statement as the person who gave him the bomb and asked him to place it at the Reef Hotel. Mr. Souyave recalled that Mr. Pool retracted the confession he had made, but his father, who tried the case, found that it had been made voluntarily. René himself was never put on trial, as there was no admissible evidence against him. Mr. Souyave recalled that Mr. Pool's case went on appeal to the Privy Council, and his conviction was upheld. Mr. Souyave claimed that his father received anonymous letters with threats to him and the family during and after Mr. Pool's trial.

26. Mr. Souyave claimed that in late 1975, his father requested that the then Governor indicate whether he could be posted elsewhere. His father was offered a three-year contract in New Hebrides (now Vanuatu), which he accepted. Sir Georges Souyave resigned and retired as Chief Justice of Seychelles when he was barely 50 years old, just a few days prior to Seychelles' Independence. At the time, Mr. Souyave and his brother were studying in the United Kingdom, but the rest of the family left Seychelles in June 1976 for New Hebrides.

27. Mr. Souyave recalled that his father's assessment of the political climate in Seychelles had been correct. He noted that his father's successor as Chief Justice was arrested on the day of the Coup and deported. In his view, he had no doubt that his father would have suffered the same fate if he had remained in Seychelles. Mr. Souyave informed the Commission that knowing his father, and having had conversations with him, he never would have served as a judge under what he claimed was an illegitimate and illegal regime that had come to power via a coup d'état.

28. Mr. Souyave claimed that following the Coup, President René proceeded to "maliciously take revenge" on the Souyave family. They were advised verbally that they would not be welcome back in Seychelles. The UK Foreign and Commonwealth Office informed his father that it was not advisable for him to even visit his country. When Mr. Souyave and his brother visited in mid-August 1979, they were followed (as set out above) and then Mr. Souyave's pupillage grant was suspended.

29. Mr. Souyave recalled that in 1981, the Seychelles Government proceeded to make demands from his father to enforce the bond that he and Mr. Souyave had signed with them regarding his studies. They demanded repayment of around £8,000. In or about 1982, he said his father sought to sell a house in Seychelles, and was informed by the Government that the sale would not be approved until Mr. Souyave paid the £8,000 for the bond, so he paid it.

30. Mr. Souyave then claimed that on 9 February 1984, the Seychelles Government maliciously compulsorily acquired all of his father's land at Parcels PR6, PR95, and PR96, which included a farm on Praslin.[4] He was offered as compensation the derisory sum of SR 260,000 for 85 acres of land, of which 10 acres was beachfront property. The family discussed the offer and refused to accept it.

31. Mr. Souyave informed the Commission that his father had inherited the land from his late grandfather. He claimed that President René targeted those he disliked by acquiring their properties under the guise of the acquisition being in the "national interest", and President René held a grudge against them. The

[4] The Land Registry documents show that PR6 was acquired on 30 August 1985.

parcel with the farm was later recorded as PR1757 after the Government's subdivision was successful. After the compulsory acquisition, their farm manager was evicted and the Seychelles Government replaced him with Andre Bonnelame, a staunch SPUP supporter and the brother of a Minister. Mr. Souyave stated that Mr. Bonnelame ran the farm in an identical manner to how Mr. Souyave's family had run the farm for almost 100 years.

32. With respect to the rest of the land compulsorily acquired in the national interest, the Government left it abandoned and did nothing with it. According to Mr. Souyave, this showed that the Government never had any plans for the land before or at the time of the compulsory acquisition.

33. Mr. Souyave stated that he did not understand how in 1984 it was in the "national interest" to have compulsorily acquired their land and farm and to proceed to lease the farm to someone else who did the same as what his father had previously been doing. It was his opinion that this was a malicious act and a gross abuse of power.

34. Mr. Souyave claimed that in about mid-1995, he had the opportunity to raise the compulsory acquisition of their land with Jacques Hodoul, who had by then left the Government but who had been the Minister for Lands in 1984 and had signed the compulsory acquisition order. Mr. Hodoul personally apologised to him. He stated that Mr. Hodoul admitted that it was an unwarranted compulsory acquisition and, as with most of the acquisitions at the time, it was politically motivated rather than motivated by a legitimate national interest. Mr. Souyave claimed that Mr. Hodoul informed him that he had been under the orders of President René to acquire the Souyaves' land.

35. Mr. Souyave claimed that his father wanted all of his properties returned to him, and that those properties should have been returned pursuant to Part III of Schedule 7 of the 1993 Constitution. Mr. Souyave pointed out that Part III of Schedule 7 did not require an owner to prove what he or she intended to do with land that was returned to them or impose any conditions on the return of land compulsorily acquired.

36. Mr. Souyave claimed that the Government acted in bad faith in its negotiations with his father and that their actions were malicious and vexatious. He stated that conditions were imposed on his father for the return of his land. He had to write a long and detailed account to the Minister, Dolor Ernesta, as to why he should be returned his land and what he proposed to do with it upon its return. He claimed that conditions were eventually imposed on the return of land to his father, and that these conditions were unconstitutional. To his knowledge, no such conditions were imposed on others who had their land returned to them. Mr. Souyave believed that the Government hoped that his father would be unable to comply with the conditions and therefore they would be able to take the land back.

37. Mr. Souyave recalled discussing the Government's offer with his late father and his late brother in 1993. His father informed him that he had been told that the farm, PR1757, would never be returned to him. He was told that if he did not accept the offer with conditions, the Government would not return the other properties they had acquired. Mr. Souyave recalled that his father felt that he was under duress and that he had no option but to accept the Government's terms. Mr. Souyave claimed that his father wrote to the Government seeking first refusal on the farm if the Government ever sold it, indicating the fact that he wanted that property returned.

38. Mr. Souyave advised the Commission that the compensation of SR 383,000 he was given for the farmland at Parcel PR1757 was derisory. He claimed that it was not clear what the value of the farmland was then. However, from the correspondence, it could be ascertained that the Government valued land in the area at around SR 75 per square metre (sqm), as this was mentioned in a transfer document dated 14 October 1994, which stated that his father had to make the offer to some tenants to buy 1000 sqm for no more than SR 75,000. Mr. Souyave claimed that if this is what the Government believed in 1994 to be the value of land, then the farm, which comprised 20,000 sqm, should have "netted" his father SR 1.5 million in compensation. Mr. Souyave advised the Commission that as of 2020, the Government still owned the farm at PR1757.

39. Mr. Souyave advised the Commission that in 2010, knowing that Andre Bonnelame was in poor health, his mother, on behalf of his father, requested that the Government return the farm upon the passing of Andre Bonnelame or upon the termination of the lease. The Government refused, and went on to lease the property to Andre Bonnelame's son, Jourdan Bonnelame. Mr. Souyave claimed that they believed that the present lease to Jourdan Bonnelame was to expire in 2021, and that they were advised that Jourdan Bonnelame did not farm the land but had sublet it to someone else.

40. Mr. Souyave informed the Commission that the heirs of Sir Georges Souyave did not claim any compensation. They requested that the farm PR1757 be returned to its lawful owners, even if they had to wait for the present lease of Jourdan Bonnelame to expire.

41. On 21 July 2022, in response to a request by the Commission, Mr. Souyave provided further information as to the current status of the lease by Mr. Bonnelame. He stated that he did not think the Government renewed the lease on Parcel PR1757 which expired in January 2021. On the advice of their attorney, Mr. Bernard Georges, Mr. Souyave and his family filed for an injunction/restriction on 8 March 2020 to prevent the renewal of the lease on PR1757 and to prevent any dealings on PR1759, pending the decision of the Commission in the present case. In correspondence to the President which Mr. Souyave provided to the Commission, Mr. Souyave stated that "we agreed pending the TRNUC's determination that the status quo should be maintained as it would be for the benefit of the country in this period of economic crisis for Mr Ralph Souffe to continue farming, even if he did not have a lease on the land". Mr. Souyave also noted in that correspondence as follows:

> If returned, we have every intention to continue farming on PR1757. Very likely and under the right circumstances we would enter into a contract with Mr Ralph Souffe to continue farming on the land. In fact, we already have other interested parties who are desirous to farm on the surrounding land around the farm. We shall consider that and be prepared to invest further in any farming project for not only our benefit but that of our fellow countrymen.

42. In response to that correspondence, the Office of the President on 6 September 2021 acknowledged Mr. Souyave's letter and stated that it was referring his request to the Ministry of Lands and Housing, PS, Mrs. Muriel Morgan, for further communication.

43. On 14 September 2021, the Lands Department for their part notified Mr. Souyave that his communication was being referred to their lands processing team, and that he would be advised as to the status of certain internal processes of the Department, including due diligence, land registration search, consultations with key referral agencies, and other processes.

C. Evidence of Bernard Georges

44. The Commission called Bernard Georges,[5] the lawyer of the Souyave family, who advised the Commission that Mr. Souyave had adequately described the factual matrix of the complaint before it. He noted that the bulk of Sir Georges Souyave's properties had been returned and compensation paid. The only outstanding issues were the farm and the access road. Mr. Georges proposed the rhetorical question as to why the Commission was being burdened with this small matter and posited that the answer was not in the scale and nor was it vengeful on the part of the family. It was an issue of principle and of constitutional importance given the commitment of the Government in Schedule 7, Part III of the 1993 Constitution.

45. Mr. Georges claimed that the genesis of the acquisition of Sir Souyave's properties was motivated in light of his presiding over the trial and conviction of Guy Pool for the Reef Hotel bombings. Mr. Georges stated that Albert René was a man that did not forgive, and that he saw the conviction of Mr. Pool as a personal affront and was determined to get back at Sir Souyave personally. In Mr. Georges's opinion, the acquisition of the properties was an act of pure and simple retribution and vengeance. Having acquired the land, he said, the Government did nothing with it except to continue farming PR1757.

46. Mr. Georges advised the Commission that, looking at it from any angle, this was the former Chief Justice of the country who was being "treated in the shabbiest way possible". He stated that these factors compelled his client to come before the Commission and seek redress.

47. Mr. Georges informed the Commission that when it came to the return of the properties acquired, there were conditions attached to that return. The former Chief Justice of the country, who Mr. Georges reiterated had been knighted by the Queen, had to beg for the return of his land, and he only got it back on the condition that he would invest money. The imposition of this condition was an affront to the Constitution, Mr. Georges stated.

48. Mr. Georges submitted that factually, there was evidently no national interest in the acquisition. He noted that at least in some cases, there was some development of acquired land, but in this case, nothing was done with the land compulsorily acquired until it was returned.

49. Mr. Georges informed the Commission that the concept of acquisitions in the "national interest" was introduced following the Coup d'état because it was felt that acquisitions in the "public interest" was too restrictive. Mr. Georges stated that under the criteria of "public interest", land could not be acquired out of vengeance. "National interest", however, was in Mr. Georges's view a nebulous concept which allowed for acquisition upon any motivation, legitimate or illegitimate.

50. Mr. Georges noted that the part of land not returned to Sir Souyave was a working farm at the time of acquisition, and that it remains a working farm, although a less productive one than it was prior to the acquisition. He further informed the Commission that the land was not alienated by the Government but only leased, and that that lease was to expire in 2021.

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[5] Hearing No. 51 of Monday 2 March 2020.

51. Mr. Georges stated that there was no legal constraint (lease-based or otherwise) on the Government to return the land, if so ordered by this Commission. He further noted that it was never intended by the parties that the Government own the right of way. All that was intended was an easement to make the farm accessible. According to Mr. Georges, there was no issue of this being returned to the Heirs Souyave. The Government had not used it to access the farm; it had access already built.

52. Mr. Georges advised the Commission that the final issue was the compensation that had been paid for the farm long ago. He stated that this issue was peripheral, however, to a larger constitutional issue. He said the fact that the Government paid compensation on a low scale should not preclude the return of the property, and there is no reason that compensation should be returned. He said that first, it was of low value, and second, his client had been deprived of the land for a substantial period of time.

53. Mr Georges noted that the question of duress was also relevant. The Government repeatedly gave returnees no say in the matter – from 1993 up until about 2017. He claimed that for over 15 years, the Government reneged on its constitutional obligations. Mr. Georges informed the Commission that pursuant to Section 7, Part III of the 1993 Constitution, the Government was obligated to value land at market value, but instead it continued to pay based on existing use value in flagrant disregard of its own commitment and the provisions of the Constitution.

54. Mr. Georges urged the Commission to take measures to ensure that the lease was not renewed in 2021 and to file an application for a restriction at the Land Registry. Mr. Georges stated that more generally, he was asking the Commission to ask the Government not to enter into commitments with respect to land it owned that was the subject(s) of complaint(s) before the Commission.

D. The Souyave's Supporting Documents

55. The Souyaves provided the Commission with the Notice of Acquisition pursuant to the Land Acquisition Act, 1977, which recorded the acquisition of parcels PR95 and PR96 on 9 February 1984 in the national interest. A further notice of acquisition obtained by the Commission from the Land Registry showed PR6 being acquired on 30 August 1985.

56. A letter dated 4 January 1989 from Sir Georges Souyave to President René stated as follows:

> Dear Albert, I am hereby seeking your intervention for a fair and just settlement of the compensation due to me in the matter of the compulsory acquisition by the Seychelles Government of my three parcels of land situated at Cotes d' Or, Praslin, namely, (1) PR95 and PR96 (totalling about 83.5 acres) compulsorily acquired on the 9th February 1984 for which the Government has offered SR 230,000 as compensation: and (2) PR6 of a little over 1 acre compulsorily acquired afterwards I believe in 1985, for which the Government has offered SR 30,000 as compensation.
>
> Although I feel that the sums offered as compensation are low, I would be prepared, in order to come to an amicable settlement in regard thereto, to accept the same with interest thereon at 8% per annum from the dates of acquisition to date of payment, provided they are paid promptly and in full or by instalments over 5 years, and not over 20 years as I have been informed the Government wishes to do.
>
> My reasons for asking for full payment earlier are that:-

(1) the 2 sums offered are not large, and there have been precedents of immediate full payment of compensation of sums of any amount;
(2) I am almost 63 years of age, will soon retire from working life, and need the money to set my wife and myself up in retirement;
(3) it is unreasonable and unfair to compel a person of my age with a life expectancy of a few years to wait for 20 years to receive the full compensation concerned;
(4) 20 years is a long time and the value of any currency would be very greatly affected adversely over that period.

Regarding the small plot PR6, I would like to make an alternative appeal to you. I am asking you to revoke the compulsory acquisition order made in respect thereto and return it to me. I am so asking for the following reasons:-
(1) I had for years set aside that plot for my own use as a residence on my retirement'
(2) But for the fact that the Government had taken it, I would already have built a house thereon;
(3) I have no longer any land in Seychelles and I need that plot for my retirement which is likely to take place in the near future;
(4) the Government having already taken most of the properties in the area cannot seriously need that little plot. Mr. Bernard Pool of M.A.P Registrars Ltd., [...] on my behalf [requests] that I be allowed to retain 1 acre of beach property from the properties compulsory acquired from me but was met with the reply that the State needed it;
(5) It is altogether unfair and unjust that, whereas some land land (sic) owners of Cote d'Or have had the privilege of keeping part of their lands of the extent of much more than 1 acre, in my case I am deprived altogether of my landed properties.

I am appealing to your good sense of justice and fairness in the above matter and look forward to a favorable reply in due course.
If you consider fit to enter into negotiations on the proposals submitted in my present appeal, I suggest that, for convenience and to save time, your representatives may contact, and deal with, Mr. and Mrs. Leon Pool of Bel Ombre, my duly constituted Agents, who are professionally represented by Mr. Bernard Pool aforementioned, to whom I am copying this letter.

57. A letter, dated 12 November 1990, from the Ministry of Community Development from Patrick Lablache, Director General of the Ministry of Community Development Lands & Infrastructure Division, to Sir Georges Souyave, referred to his letter of 4 January 1989 and Mr. Lablache's letter of 20 February 1989 concerning the compulsory acquisition of Parcels PR6, PR85 (sic) and PR96. In that letter, Mr. Lablache informed Sir Souyave that the Government was prepared to pay the proposed compensation of SR 260,000 with interest at 4% from the date of acquisition in four equal quarterly instalments, with interest at 8% on the reducing balance. In addition, the Government was to transfer as additional compensation approximately one acre of land at Cote D'Or between the New Road Diversion and the Old Road as shown in a plan attached to the letter.

58. A letter, dated 22 February 1991, from Mr. Jose Souyave to Mr. Lablache, referred to a meeting on 11 January to 1991 to discuss the content of Mr. Lablache's letter of 12 November 1990 to Sir Souyave. Mr. Jose Souyave advised that he had had the chance to discuss with his father and the rest of the family the proposed compensation for the properties acquired. Mr. Jose Souyave noted that, as he indicated during their meeting, the proposed compensation as detailed in Mr. Lablache's letter of 12 November 1990 was not acceptable, but that the family was rather anxious to settle the matter once and for all. Mr. Jose Souyave noted that it had been five years since the acquisition, and to their knowledge, the properties had been abandoned. He stated that the family would be more than happy to have the properties returned to them. However, if the Government did have a long-term plan for Cote D'Or and could not revoke the compulsory acquisition order for one reason or another, the family

would accept as part of the compensation the transfer of about nine acres. As for the remainder of the properties, approximately 76 acres, they were looking for fair compensation and would not accept the price he offered per acre, approximately SR 2,700 based on agricultural returns. Mr. Jose Souyave noted as follows:

> Your proposed compensation calculated by the formulae of the Lands and Acquisition Act (as amended) did not take into consideration that the property was non-productive because of the newly established coconut rehabilitation scheme established with the help of the Agricultural Department. We also had no reason to exploit the vast amount of timber or mine for gravel which subsequently the Government did after the compulsory acquisition. If it is the intention of the Government to use the compulsory acquired properties for tourism rather than agriculture, which we believe is the true motive, then we should be compensated accordingly based on the price of property at the time used for tourism. I am led to believe that the Government have sold plots of land at Anse Boudin, Praslin at SR 70,000 per acre as recently as December 1990. Without doubt I can rely on your fairness and honesty to come up with an improved figure over the proposed compensation. As for the terms of payment, we have no option but to agree to the terms of payment as detailed in your letter dated the 12th November 1990.

59. A letter, dated 17 February 1992, was sent from Sir Souyave to the Director General, Ministry of Community Development, Lands and Infrastructure Division (attention Mr. Gerald Pragassen) regarding "Compulsory Acquisition of Parcels PR6, PR 95, and PR 96", in which Sir Souyave recalled his meeting with Mr. Lablache in early May 1991, where the above letter of his son was discussed and confirmed by Sir Souyave. Sir Souyave's letter stated that Mr. Lablache had then undertaken to convey the position of the Government within two months, but to date no communication had been received. Sir Souyave further stated as follows:

> I understand that the Seychelles Government has now changed its policy on land and is returning expropriated lands to their owners. Accordingly, I am hereby requesting the Seychelles Government to return to me at the earliest opportunity all the above-mentioned parcels of land at Code d'Or, Praslin compulsorily acquired from me.

60. A letter, dated 10 April 1992, from Mr. Gerald Pragassen to Sir Souyave, advised that Sir Souyave's letter of 17 February 1992 had been discussed with his son Jose Souyave at a meeting with Mr. Lablache and Mr. Pragassen on 8 April 1992, and that Jose Souyave would brief Sir Souyave on that discussion.

61. A letter, dated 24 June 1992, from Sir Souyave to the Director General, Ministry of Community Development and Infrastructure Division (attention Mr. Gerald Pragassen), regarding "Compulsory Acquisition of Parcels PR6, PR95, and PR96", noted that since Sir Souyave's return to Seychelles on 5 May 1992, he had met with Mr. Lablache and Mr. Pragassen on numerous occasions seeking to resolve the matter of compensation for his acquired land, but nothing had been achieved to date. His expressed his anxiety at resolving the matter as soon as possible, as he anticipated building a home for himself and developing other parts of the property for tourism. He made the following proposals for consideration:

> I ask that the Seychelles Government returns to me at the earliest all of the above-mentioned parcels of land at Cote d'Or Praslin, compulsorily acquired from me; alternatively, 2. As the Seychelles Government is now running a State farm on part of PR95 and PR96 and that it would be difficult to return these two parcels to me in full, I propose that by way of fair compensation I be returned part of my original land plus the other portions shaded on the sketch attached to this letter. In so doing,

> I would be given back about 40 acres in total instead of my original 85 acres. The above are suggested settlement in respect of PR95 and PR96 compulsorily acquired from me. As for PR6, the Seychelles Government should return to me vacant possession of the same unencumbered. I should be grateful for a reply within the next 4 weeks.

62. A letter to Sir Souyave, dated 26 August 1992, from Mr. Lablache, referring to his letter of 24 June 1992, advised that after further consideration, the Government was prepared to make a revised offer in respect of the compulsory acquisition of Parcels PR6, PR95, and PR96 in the following terms:

> The transfer of the encumbered Parcel PR6 to you. Government will try to assist the tenant, Mr. Lesperance with one of the and (sic) bank plots at Cote D' Or; 2. The transfer of the part of PR95 (approximately 4.14 ha) situated on the seaward side of the New Cote D'Or road to you; 3. A ex-gratia award of R90,000 over and above the original offer of R260,000 bringing total cash compensation payable to R350,000. This sum plus interest at 4% per annum from the date of acquisition will be paid in 2 quarterly instalments with interest at 8% p.a. on the reducing balance.

63. A letter, dated 12 October 1992, to Mr. Lablache from Sir Souyave in response to the letter of 26 August 1992, stated as follows:

> [...] I note with satisfaction that the Government is prepared to return to me PR6 (as it stands) and part of PR95 (approximately 4.14 ha) situated on the seaweed side of the New Cote d'Or Road. However, I am not at all satisfied of its decision in respect of some of the remaining part of PR95 and also of PR96, totalling some 75 acres most of which are flat land. Needless to add that the monetary compensation offered is most inadequate.
>
> May I remind you that according to President Rene's declared and published new policy, all expropriated lands not used by the Government are to be returned to their former owners. With this in mind, I visited Cote d'Or in May and June 1992 to ascertain what use the Government had made of the parcels of property of which I had been expropriated in the national interest. I discovered the following:
>
> PR6 – is not used at all by Government.
> On PR95 – only a small area (hardly ¼ acre) towards the "fond du plateau" is being used by it and is planted with elephant grass. What really saddened me was that on PR95, about 15 acres of coconut plantation which I had newly established on it before 1976 and was by that year, when I left Seychelles, starting to bear fruit, have disappeared. Whether uprooted, felled or how I do not know. Incidentally, I had borrowed money – a fair sum, from the then Government which I have repaid to help establish the special coconut plantation.
> On PR96 – which is also a valuable parcel of land on which were at the time of compulsory acquisition the Manager's house and outhouses of appreciable value and also strata of gravel in the ground, the Government has built in one corner 2 sets of pig sties, a small store and planted a few breadfruit trees in that area. These are all they have done on these plots over 8 years or so.
>
> Considering the very small and rather insignificant use which the Government made of part of PR95 and PR96 and as PR6 was not used by by (sic) it at all, I felt that the alternative proposals contained in my letter of 24 June 1992 were reasonable and fair. I still feel so and urge upon you that the first alternative proposal, namely the return of all the three parcels of land under reference, plus naturally some adequate monetary compensation, would be the fairest and most sensible way of settling this matter. I would ask you to reconsider this first proposal.
>
> If you still feel that you should settle along the lines of the second second (sic) alternative proposals with amendments, I think that further reconsideration must be given. There is the fact that at least some land above the new Cote d'Or Road in PR95 could be returned to me as only a very small portion of that parcel as mentioned above is being used by Government. There is next the monetary

> compensation which need be looked into carefully as both PR95 and PR96 are valuable parcels of land and we need more time than brief meetings to discuss and agree on it. The particulars of my claim for compensation submitted to the Government under the law as a result of the compulsory acquisition order are relevant here.
>
> When I last discussed the matter with you and Mr. Pragassen, my impression was that you agreed to or at least considered fair and reasonable my proposal that, pending a final settlement of the full compensation, we should agree on a part settlement which was that the Government would forthwith return to me PR6 (as it stands) and that part of PR95 on the seaward side of the New Cote d'Or Road, leaving the rest of the compensation to be negotiated fully and decided afterwards. The reasons for that was (sic) that I impressed upon you that I required those two areas urgently for development, and more time is necessary to discuss the compensation in respect of the remaining areas and generally. I am rather surprised that you are now presenting me with a sort of "package deal" offer of which I regret to say that I am not satisfied.
>
> I must therefore ask you at this stage to reconsider again the part settlement proposal I have referred to in the preceding paragraph leaving the rest of the compensation to be decided and agreed afterwards and in which case your rights and mine are reserved. There should in my view, be no objection on your part to the immediate return of the 2 acres mentioned as you in fact are prepared to return them according to your letter under reference.
>
> Incidentally, as to PR6, in so far as I am concerned, I do not agree that Mr. Patrick Lesperance was in fact and in law my tenant at any material time. Perhaps he is a tenant of the Government but of this I am unaware. At the time the law on tenants' rights came into force, his tenancy with me on a very small area in the corner of PR6 had already expired and he was nothing but a trespasser thereon. I have noted with satisfaction and I am grateful to you for your suggestion that you would be prepared to assist Mr. Lesperance to vacate PR6 and move to the Government land plots. An early reply would be much appreciated for the reason of the urgency indicated above and which I told you verbally in our meetings. [...].

64. A letter, dated 23 June 1993, from the Director of Lands, Gerald Pragassen for the Principal Secretary, to Sir Souyave, made reference to various previous correspondence and meetings regarding the acquired parcels of PR6, PR95, and PR 96. It advised that after "careful consideration", the Government was prepared to return in principle the above properties as part compensation for its acquisition on the following conditions:

> Government retains a portion of PR95 and PR96 on which he Ministry of Agriculture has a "Piggery" and ancillary buildings. (2) You grant a 3 metre Road Access from the Main Public Road to the piggery along and inside boundary Parcel PR95. (3) You grant a right to Government to draw water from a small reservoir on top of the hill on Parcel PR95.

65. Sir Souyave was further advised that the portion to be retained by the Government would need to be property demarcated and surveyed, and that he would be compensated for this portion based on current market value for agricultural land in Praslin. Finally, that the Government was in the process of rehousing the tenant on PR6, and once that was done, the transfer to Sir Souyave was to be formalised.

66. Another letter was received, dated 16 August 1993, from Sir Souyave to the Principal Secretary, Department of Community Development, Lands and Infrastructure Division (attention Mr. Pragassen) in reference to the letter of 23 June 1993. In that letter, Sir Souyave referred to the Government's agreement to return in principle PR6, PR95, and PR96 as part compensation for its acquisition. He noted that, from a recent meeting had by his son, Jose, with Mr. Pragassen, in addition to the monetary

compensation in respect of the portion of land to be retained by the Ministry of Agriculture, there were other items of monetary compensation payable such as, *inter alia*, as follows:

> (1) Compensation for the retention by the Government of the said properties since the date of their compulsory acquisition and for the cost I would have to incur to restore and return the properties to the good state of husbandry in which they were at that date. (2) Compensation for buildings existing on the properties at the time of acquisition.

67. Sir Souyave further advised that he understood from his son, Jose, that the portion of land the Government wished to keep for the pig farm would be compensated at present market value. He further advised that: "I would also like to have the right of first refusal to buy back the said portion retained for the Ministry of Agriculture when and if the Government ceases to require this piece of land for agricultural purposes. [...]".

68. A further letter was sent from Sir Souyave to the Principal Secretary, Department of Community Development, Lands and Infrastructure Division, dated 25 October 1993, in regard to the acquired parcels. In that letter, Sir Souyave recapped the offer made in the letter of 23 June 1993, set out above, referred to his letter of 16 August 1993 accepting the Government's proposals made in the letter of 23 June 1993, and referred to the meeting he had with the Minister for Lands on Tuesday, 19 October 1993. Sir Souyave advised as follows:

> As requested by the Minister of Lands, I hereby submit a general outline of my proposed development plan for the above properties on their return to me. I annex herewith a copy of the plan on which the above properties appear and I am referring to it as a guide so that my proposals may be followed and understood. [...]".

69. A detailed plan in relation to all the parcels followed, including agreement with the right of way and to draw water, was attached reflecting the conditions set out in the 23 June 1993 letter.

70. A letter of 15 March 1994, to Sir Souyave from the Director of Lands, Gerald Pragassen, on behalf of the Principal Secretary, stated as follows:

> [...] I am pleased to inform you that after careful consideration, following our negotiations, Government has agreed to the following as full and final compensation for the acquisition of the above 3 parcels of land:-
>
> (a) Transfer of Parcels PR6, PR1758 and PR 1760 to you. (Parcels PR1758 and PR1760 are sub-plots of PR95 and PR96)
> (b) Cash payment of the sum of R383,000 to be made in 2 equally quarterly instalments
>
> The Transfer of PR6, PR1758 and PR1760 will be subject to the following conditions:-
> (a) that you implement your development project within a period of 3 years;
> (b) that the two existing tenants on Parcel PR1758 are offered to purchase their respective plots of land around their existing houses;
> (c) Mr. Patrick Lesperance is permitted to stay on Parcel PR6 until he completes his house on his new plot of land, which should not exceed 6 months from the date of transfer of PR6 to you;
> (d) that a 3 metre right of way is granted from the Main Road across Parcel PR1756 to the "Pig Farm" on Parcel PR1757;
> (e) that you grant a right to Government to draw water from the existing reservoir on Parcel PR1758 for the use of the "Pig Farm".

71. On 29 September 1994, Sir Souyave registered a proprietary company, Sir Georges Estate, which was incorporated under the Companies Act 1972 and whose shareholders were family members. The objects of the company were mostly property development.

72. On 14 October 1994, titles PR6, PR1758, and PR1760 were transferred by the Government as part compensation for the acquisition under the Lands Acquisition Act, 1977, of land parcels PR6, PR65, and PR96 to Sir Georges Estate (Proprietary) Limited. The transfer document recorded the following:

> [...] and Louis Georges Souyave hereby acknowledges having received full compensation in respect of the acquisition above-referred of land parcels PR6, PR95 and PR96 and consents full and valid discharge to the Republic in respect thereof-
>
> (a) The Transferee undertakes to include or cause to be included in any transfer (other than a transfer for the purpose of paragraph (c) of any or any part of the land comprised in the above-mentioned titles all the relevant conditions hereinafter contained pertaining to the land or the part of the land which is the subject of the transfer.
>
> (b) The Transferee shall implement the development project agreed between Sir Louis Georges Souyave and the Republic before the date of this transfer in respect of the land comprised in the above-mentioned titles within three (3) years from the date of this transfer;
>
> (c) The Transferee shall, not later than six months from the date of this transfer, offer for sale to Mrs Estellie Gomme and Mr Wilfred Suzette each a portion of land of approximately one thousand square metres (1000m2); the portion of land offered for sale to each of the aforementioned persons shall include the house in which each of these persons is presently residing; the asking price (which shall include the price for the house on the land) for each portion of land shall not exceed rupees seventy-five thousand (R75,000) and the Transferee shall, in each case, keep the offer for sale open for a period of six months from the date that offer is communicated in writing to each of the afore-mentioned persons. The Transferee shall be relieved of the obligation to offer for the sale to the persons afore-mentioned the land afore-mentioned should the persons fail to exercise the option to purchase within the period of six months. The Transferree hereby acknowledges that it shall be solely liable for any claim, damages or costs, however arising, in connection with the non-fulfilment by the Transferee of the afore-mentioned obligations to offer for sale or, should any of the persons fail to take up the offer for sale, action in obtaining vacant possession of any portion of land;
>
> (d) The Transferee undertakes to allow Mr Patrick Lesperance to continue to occupy a house situated on the land comprised in Title No. PR6 rent free for a period of six (6) months from the date of this transfer and to indemnify the Republic from any claim, damages or costs which may arise should the Transferee seek to evict Mr Patrick Lesperance before the period of six months above-referred and further acknowledges that the Republic shall not in any way be liable for any damages or costs arising from any action taken to evict Mr Patrick Lesperance from the house after the period of six months should Mr Lesperance fail to vacate the house after the period of six months;
>
> (e) The Transferee shall provide and grant a motorable right of way over and across the land comprised in Title No PR1758 to the owner or occupier, their agents, servants and visitors of the land comprised in Title No PR1757. The location ("I'assiette") of the right of way shall be agreed by the parties;
>
> (f) The Transferee shall grant to the owner or occupier, their agents or servants of the land comprised in Title No. PR1757 a right to draw water from the reservoir situated on the land comprised in Title No PR1758; provided that the total amount of water drawn from the

> reservoir by the owner or occupier, their agents or servants, shall not exceed one quarter of the volume of water in the reservoir at any one time; the Transferee shall be solely liable for the maintenance and up keep of the reservoir.

73. Other documents obtained from the Land Registry revealed that title PR1757, an area of 18,902 square metres, was leased by the Government to Jourdan Justin Bonnelame at a rent of SR 3,072 per annum for a term of 10 years beginning 25 January 2011. Notably, clause 7(c) of the Lease Agreement prohibited the lessee from subletting the property.

74. On 22 January 2018, approval was given by the Seychelles Agricultural Agency for an agricultural partnership between Mr. Bonnelame and Mr. Ralph Souffe on Parcel PR1757, including a joint allocation and subsequent lease of the property. The accompanying Certificate of Registration of the same date, which was valid from 29 June 2017 to 29 June 2020, provided that the business association was for the purpose of pig breeding and pig fattening.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

75. 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".[6] These principles must guide the Commission's determination of whether the conduct alleged constitutes a human rights abuse pursuant to its Act.[7]

76. 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.[8]

77. 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."[9] Any finding of individual responsibility is to a balance of probabilities standard.[10] In that regard, the Commission, underscores that any such determination of individual responsibility is not

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

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.

78. The Commission further notes that a person who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any violation and [offering] sincere apologies to the victim or victims".[11] The Commission considers that these provisions, in light of Sections 3(9) and 6(8)(a), provide sufficient protection for the human rights of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

79. 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.

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

81. 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.

82. 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

[11] 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 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).

allegation, the Commission will consider domestic constitutions and laws and applicable treaties to which Seychelles has committed.

B. Approach to the Evidence

83. 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.

84. 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.

85. 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.

86. 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 Land and Abuse of Office

87. The Commission finds on the balance of probabilities that the Souyave family suffered the unjustified acquisition or loss of land under Section 2(8)(h) of the TRNUC Act,[12] with regard to the compulsory acquisition of Parcels PR6, PR95, and PR96 on 9 February 1984.

88. Considering the required admissibility nexus of this claim to the Coup d'état of 1977, the Commission finds that the property having been acquired in 1984, the claim falls within its primary temporal mandate from the Coup d'état of 1977 to the so-called return of multiparty democracy in 1993. As the Commission recalls the allegation that the properties in question were acquired in political retaliation or as a personal vendetta by President René in reference to his supposed dissatisfaction with the trial and conviction of SPUP supporter Guy Pool, the Commission finds that its thematic mandate is also met.

[12] TRNUC Act, sec. 2(8)(h).

89. The Commission considers that the violation of unjustified acquisition or loss of property or business 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. The Commission reaffirms the fundamental and customary international legal nature of the right to property and the freedom from arbitrary deprivation of property.[13]

90. The Commission has no hesitation in light of the evidence adduced in this case in finding that the first element has been met. The Commission finds on a balance of probabilities that following the Coup d'état, the Government compulsorily acquired three parcels, PR6, PR95 and PR96, which had been owned by the late Sir Georges Souyave and later his heirs. Out of those three parcels, the Commission accepts the evidence before it that another parcel, PR1757, was later subdivided from PR96 and made into a farm of about five acres. The Commission finds that this farm was turned into a farm/piggery by the Government and overflowed into the border of parcel PR95. The Commission further finds that these parcels were compulsorily acquired by the Seychelles Government putatively on the ground of "national interest" on 9 February 1984.

91. Regarding the lawfulness of that taking, the Commission notes that the acquisition of the above parcels 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.[14] The Commission notes that as concerns the national interest in the present case, the properties were put to very little agricultural development or use during the Government's tenure. Further, despite the presence of one or a few tenants who rented the property under the Government, there is no evidence at all of any legitimate national interest to which these properties were put. Instead, the Commission recalls the unrefuted evidence before it that the property was acquired as political retaliation or vengeance on the part of then President Albert René for Sir Souyave's ruling against Guy Pool in his court case, which Mr. René likely viewed as a display of disloyalty toward the SPUP party, and likely assumed that Sir Souyave would not be in support of his regime now that it was in power. In addition, the Commission recalls Mr. Souyave's evidence that Mr. Hodoul, who was then Minister for Lands and whose signature was on the acquisition order, apologised to Mr. Souyave in 1995 and stated that the compulsory acquisition was unwarranted and politically motivated. Mr. Souyave also testified that he claimed that Mr. Hodoul was under the orders of President René while executing this order.

92. The Commission further finds that the Government then leased PR1757 to Andre Bonnelame, a staunch SPUP supporter and brother of a Government minister. The Commission notes that this parcel was acquired in the "national interest", but that once in control of it, Mr. Bonnelame apparently ran the farm in an identical manner to that of the late Sir Souyave: that is, he farmed the land as a simple

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[13] *See* Universal Declaration of Human Rights [UDHR], art. 17, G.A. Res. 217A (III), 10 December 1948.

[14] 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.

tenant and did not otherwise use the property in any noticeable "national interest". Moreover, the Commission accepts that the Souyave family tried to petition the Government to allow them to re-acquire PR1757 either after the passing of Andre Bonnelame or after the end of the lease. The Government refused, and instead leased the property to Jourdan Bonnelame, Andre Bonnelame's son. The Commission finds this action to have contributed to the Government's ongoing violations of the Souyave family's rights.

93. The Commission therefore finds on the foregoing basis that a compulsory acquisition of property on such a political and punitive basis is entirely improper and contrary to the rule of law, and thus finds the acquisition in question to have been arbitrary and unlawful, in satisfaction of the first element.

94. With reference to the second and third elements, the Commission finds that the property in question is clearly real property, comprising of many acres of land and dwellings thereon. It finds from the evidence before it that the acquisition of this land clearly resulted in the deprivation of the use and enjoyment by the Souyave family of their property. Thus, the second and third elements are met.

95. Turning to the fourth element, whether there was payment of adequate, prompt, and effective compensation for this taking, the Commission finds this element met simply by virtue of the lengthy and beleaguered negotiations between Sir Souyave and the various Government officials, evidencing a lack of promptness, notwithstanding the issue of adequacy. The Commission notes that eventually, only after much back-and-forth, all properties apart from PR1757, the farm/piggery, were returned to the late Sir Souyave or his heirs. Parcel PR1757 was leased to Mr. Andre Bonnelame by the Government.[15]

96. Regarding the adequacy of the compensation, the Commission recalls that the right to compensation under the Lands Acquisition Act itself having been effectively dissipated, Schedule 7, Part III of the 1993 Constitution was an intended remedy, requiring the Government to negotiate in good faith with a view to returning the property, providing an alternate property, or providing monetary compensation (or a mixture thereof up to current market value) depending on the current status and use of the property.[16] The Commission recalls that at various times, the Souyave family requested both the return of the properties and adequate compensation. The Commission recalls, for instance, that on 9 February

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[15] The properties were evidently returned on the conditions that the Government retained access to a 3-metre road, that the farm had access to a water reservoir inside the boundaries of PR95, and that other specific developments be undertaken. The Commission also notes that there was potential for the Government to return Parcel PR1757 with the lease, as discussed in the subsequent finding.

[16] *See* Constitution of the Republic of Seychelles, Constitution of the Republic of Seychelles (Preparation and Promulgation) Act, 1992, Act. 2 of 1992 (21 June 1993), Sched. 7, Part III, art. 14 [hereinafter Constitution of 1993]. Specifically, Article 14(1)(a) of that section grants the constitutional right to all persons whose property had been previously acquired under the Lands Acquisition Act, 1977, to seek a review of the compensation paid, and, where the property taken was still owned by the Government and not subject to a development plan, returned. Article 14(1)(b) provides that where there is a Government plan to develop the property and the person from whom the land was acquired satisfies the Government that the person will implement the plan or a similar one, the land shall be transferred back to the person. And lastly, Article 14(1)(c) provides that where the land cannot be transferred back under Article 14(1)(a) or (b), the person shall be compensated by the transfer of another piece of land of corresponding value, by monetary compensation, or by a mixture of both substitute land and monetary compensation up to the value of the land acquired.

1984, Mr. Souyave was offered compensation of SR 260,000 for 85 acres of land. The family refused this offer as a grossly insufficient amount.[17]

97. The Commission notes that the Government paid SR 383,000 as compensation to retain Parcel PR1757. The Commission accepts it as more likely than not, however, that the Government also retained ownership over part of the 3-metre road, despite the intention of the parties being otherwise, and that the road was further separated out and registered as PR1759. The Commission finds that the family were never compensated for this part of their land. The Commission notes that the Government still has possession of parcels PR1757 and PR1759 at the time of this determination.

98. The Commission recalls that the family had valued PR1757 at SR 1.5 million, based on the fact that the Government valued the land in the surrounding area at SR 75 per square metre in 1994, meaning the 20,0000 sqm farm would have had a value of at least SR 1.5 million, not taking into account the productive value of that land. As this measure of compensation has apparently not been forthcoming from the Government, the Commission finds that at no point were Sir Souyave or his heirs ever provided adequate compensation, in violation of both the Lands Acquisition Act, 1977, and the Constitution of 1993. As such, the Commission finds the fourth element of the violation to be met as well.[18]

99. Regarding the perpetrator(s) who bear responsibility for this violation, the Commission finds it clearly established that former President Albert René was responsible for this acquisition, which was evidently done out of malice and vengeance on his part. 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. 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.[19] As such, the Commission accords perpetrator status to Mr. René.

100. 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.

101. Therefore, the Commission finds that the events described above with reference to the parcels of land formerly owned by the Souyave family constitute the violation of unjustified acquisition or loss of property under the TRNUC Act, in violation of the Souyave family's human rights.

2. Abuse of Office by a Government Official

[17] Mr. Souyave, for instance, believed that the land was worth over SR 1.5 million.

[18] At this juncture, the Commission recalls that the family does not seek any compensation, obviously wanting to be done with the matter. Instead, the family requests that PR1757 and PR1759 be returned to their lawful owner—in their view, the Souyave family—even if that means waiting until the end of Jourdan Bonnelame's lease.

[19] *See* Case Determination No. 006: Paul Michaud, para. 96. The Commission has received evidence, however, that the practice of Cabinet approval was apparently *ad hoc* and not always followed.

102. Deeply concerned by the actions of the Government in disregarding key constitutional rights which were themselves intended as a means to rectify past wrongs and instil respect for the rule of law in Seychelles, the Commission additionally finds that one or more Government officials abused the power of their office in regard to the above land claims by the Souyaves. This corresponds to a violation under Section 2(8)(l) of the TRNUC Act.[20]

103. The Commission has determined that the violation of abuse of office consists of 1) the use of the capacity and powers of a public office 2) to restrict the specific rights or freedoms of a persons or persons 3) in a manner that strayed from the proper purpose of the law or of the official's position 4) by a State official.

104. Broadly, the Commission considers that this violation commonly, though not exclusively, includes discrimination or victimisation based on real or perceived political opinion or that is otherwise legally baseless or arbitrary. It recalls that equality before the law, non-discrimination, and freedom from fear of Government abuse are basic principles of human rights law,[21] rising to the level of customary international law as enshrined in the UDHR,[22] and that these rights may be violated when a government official abuses the power of their office.

105. First, the Commission finds that the first element is met, that there was a use of the capacity and powers of a public office. The Commission recalls that numerous officials in the Ministry of Lands were involved in the negotiations for compensation following the entry into force of the 1993 Constitution.

106. Second, the Commission finds that the Souyave family had the rights set out in Schedule 7, Part III of the 1993 Constitution, including the remedies of either return of their original property, transfer of a replacement property, and/or compensation at market value, all underpinned by the obligation of the Government to negotiate in good faith.[23] The Commission further finds that these rights of the Souyave family were restricted, as the Government apparently effectively ignored the family's claim for the return of the property, which had been the primary constitutional remedy in the event the land had not been developed, and there was no plan to do so. Instead, the property that was returned was subject to conditions of access to a 3-metre road and a water reserve. Further, the retention of PR1757 was ultimately to retain the benefit of the lease to Mr. Bonnelame, which notably was on a farm that had not been developed in the national interest nor otherwise served the national interest, but was rather for the private benefit of one or more individuals or businesses as a piggery. Further, the Commission recalls that the compensation paid for PR1757 and PR1759 was ultimately a very low amount, including SR 383,000 when the property had been valued at SR 1.5 million. As such, the Commission finds that the family's right to compensation was heavily restricted, satisfying the second element of a restriction of a right of the complainant.

107. Third, in assessing the lawfulness of these restrictions of the Souyaves' rights, the Commission recalls that pursuant to Schedule 7, Part III of the 1993 Constitution, the Government had no authority to impose conditions on returning the Souyaves' legally owned land. In this regard, the Commission

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[20] TRNUC Act, sec. 2(8)(l).
[21] International Covenant on Civil and Political Rights [ICCPR], arts. 2, 14, 17, 16 December 1966, 999 U.N.T.S. 171, *ratified* 5 May 1992.
[22] UDHR, arts. 1, 2, 7, 12.
[23] *See supra* n. 15 and accompanying text.

recalls that the Government imposed conditions of specific developments on the returned land, access to a water reservoir for the farm, and a right of way across the lands.

108. Further, the Commission recalls that lands that had not been developed and had no plan to be developed should be returned to the individuals that it had been acquired from, pursuant to Schedule 7, Part III of the 1993 Constitution. In this regard, the Commission highlights that the farm on PR1757 had not been developed, it had been run in much the same manner as the farm had been run by Sir Souyave when the land was first acquired. As such, the Commission finds that the land was available to be returned, and had the Government been negotiating in good faith, Mr. Bonnelame's lease could have been maintained with rental income flowing to the Souyaves, instead of to the Government. The Commission also highlights that the compensation paid for the Government to retain the benefit of the lease was vastly inadequate, and below market value as required under the 1993 Constitution.

109. As such, by imposing these conditions, failing to return the farmland, and grossly under-paying for the retained land, the Commission finds that the Government intentionally ignored their own obligations under the 1993 Constitution and notably did not negotiate in good faith as required, thus violating the Constitution and abusing their authority. As such, the Commission finds that the third element is met.

110. Considering the perpetrators who bear responsibility for this violation, as this violation is intrinsically linked to the foregoing violation, the Commission considers that former President Albert René was responsible for the failure of his Government to negotiate in good faith and respect the constitutional rights of the Souyave family. 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.

111. Therefore, the Commission finds that the Souyave family additionally suffered the violation of abuse of office by a Government official under the TRNUC Act, in further contravention of their human rights.

3. Forced Exile

112. The Commission recalls the evidence of Mr. Armand Souyave that while studying in the UK, he received information in the summer of 1977 that his family would no longer be welcome in Seychelles and decided to take steps to stay in the UK and then live with his life away from the Seychelles thereafter. The Commission considers that these facts therefore support the violation of forced exile under Section 2(8)(k) of the TRNUC Act.[24]

113. Regarding the admissibility of this violation, the Commission finds both its temporal and thematic mandates to be met. Not only did the events underpinning this violation occur directly following the Coup d'état of 1977, but they were evidently politically motivated on a similar basis as the above claim, the Souyave family evidently having been perceived as unsupportive of the revolution and the Government that had taken power with the Coup, whether due to Sir Souyave's treatment of the Guy Pool case or otherwise. This violation is therefore admissible under the Commission's mandate.

[24] TRNUC Act, sec. 2(8)(k).

114. The Commission has considered that the violation of 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.[25]

115. First, the Commission finds that Mr. Armand Souyave was not explicitly expelled or even deprived of access to re-enter Seychelles; on the contrary, the evidence in this case indicates that the Government wanted him to return to Seychelles purportedly for the purpose of having him work for them as a barrister. Nevertheless, the Commission recalls Mr. Souyave's evidence that he was watched and followed by State Security when he did return temporarily in 1979; that he felt that if he returned to work in Seychelles, he would be made to stay there permanently and be prevented from leaving; that a famous lawyer related to his mother was apparently detained without trial, and Mr. Souyave impliedly feared the same would be done to him if he stepped out of line; and that his father's successor as Chief Justice was arrested on the day of the Coup and deported. In addition, during his brief return in 1979, Mr. Souyave tried to visit President René to clarify whether he was indeed welcome in the Seychelles and whether his safety was guaranteed, but the President declined to meet with him, potentially vindicating Mr. Souyave's fears. Also taking into account the Commission's findings concerning the Government's treatment of the family with regard to their property in Seychelles, discussed above, the Commission finds for purposes of this violation that Mr. Souyave was effectively given the message that he would not be welcome in Seychelles, amounting to a *de facto* expulsion.

116. The Commission thus finds that Mr. Souyave stayed out of the country from the time of the Coup until 1979, and from then on, he lived and worked outside Seychelles. The Commission finds that this time spent outside the country is easily sufficient to constitute actual exile.[26] Therefore, the first element is met.

117. Regarding the second element, the Commission finds it established on much the same facts as listed above that the living conditions in Seychelles were made unbearable for Mr. Souyave based on the likely potential of persecution and victimisation. It specifically recalls in this respect Mr. Souyave's evidence that he was followed by State Security whilst in Seychelles in 1979, and the evidence that other lawyers associated with the opposition or generally deemed to be unsupportive of the regime were deported and/or detained. The Commission considers that the Government would likely have by this point perceived Mr. Souyave to be against the revolution and the controlling party at the time. The Commission accepts that it was this context of fear and deep-seated feeling of unease that drove Mr.

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[25] The Commission recalls that this violation is a violation of the human rights, which are at the status of customary international law, to freedom of movement and to re-enter one's country. *See* UDHR, arts. 9 (freedom from arbitrary exile), 13 (freedom of movement and right to return to one's country). *See also* ICCPR, art. 12. The Commission notes that although the ICCPR was ratified by Seychelles in 1992, due to the assumption of treaty obligations by the Government of Seychelles at the time of independence from the United Kingdom, which were not renounced by the René regime until 1979, the Commission considers that the ICCPR was in effect in Seychelles—and is thus applicable in the Commission's case determinations—from the date of independence, 29 June 1976, through to 22 October 1980, and then from the date of ratification, 5 May 1992, to the present. *See* Case Determination No. 001: Dorothy Chang-Him et al., n. 25.

[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.

Souyave to then make the decision that he would not return to Seychelles in the near future. As such, the second element is also met.

118. Regarding the perpetrators who bear responsibility for this violation, the Commission finds that President René more likely than not bore primary responsibility, and thus accords him perpetrator status for this violation as well. In this, the Commission recalls that Mr. René and his Government specifically sought Mr. Souyave's return to Seychelles, putatively for the purpose of fulfilling his scholarship bond, though without guaranteed protection of his rights by the State.[27] As above, the Commission determines that as it was Government actors, including the President, acting in their official capacities, that spurred Mr. Souyave to take the decision not to return to Seychelles for his own safety, responsibility for this violation of Mr. Souyave's rights can be attributed to the State.

119. The Commission therefore finds that Mr. Souyave suffered the violation of forced exile, in violation of his human rights.

V. RECOMMENDATIONS ON REPARATIONS

120. The Commission recommends that Mr. Armand Souyave and the Souyave family be awarded reparations in accordance with the Commission's Reparations Policy for the violations suffered as laid out above.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

121. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 054.

122. 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

[27] The Commission again recalls the evidence before it of the René Government detaining lawyers and of President René's evident disfavour of Mr. Souyave's father in relation to the Guy Pool case, and the President's lack of reassurance to Mr. Souyave that Mr. Souyave would be safe in Seychelles.

Archbishop James Wong, Commissioner 