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

Case No: 057

The Truth, Reconciliation and National Unity Commission

In the Complaint of Claudette Albert

31 December 2022

Determination on the Complaint of Claudette Albert

Complainant:

Claudette Albert

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. Claudette Albert, who brings her complaint as a victim, was filed in August 2019. Consequently, her complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Pursuant to Section 2(8), the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977. 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 Albert alleges wrongful termination of her employment with the Seychelles Broadcasting Corporation in 1992 on political grounds. She further claims that following her wrongful termination, she was unable to secure employment in any organisation or agency, and she has remained unable to secure employment to date.

II. PROCEDURAL HISTORY

7. Satisfied that the complaint of Ms. Albert prima facie alleged violations related to the Coup d'état of 1977, the Commission rendered her complaint admissible on 19 September 2019.

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

8. On 13 November 2019, the Commission began hearing evidence in the case of Ms. Claude Albert.[2] The Commission heard evidence from four (4) witnesses.[3] The Commission also received relevant documents including the employment file of Ms. Albert.

III. EVIDENCE RECEIVED

A. Evidence of Ms. Albert

9. Before the Commission, Ms. Claudette Albert claimed that in 1978, she was appointed as a Reporter in the Information Section of the Information and Broadcasting Division of the Department of Administration and Information. She worked as a journalist on the agricultural desk. She stayed in the Information Service, and in 1982, she transferred to Radio Television Seychelles (RTS). She started helping with programming, and received training in France. She worked very hard and moved up the ladder. From 1986 to June 1988, she was the Head of the Planning Section of both Radio and Television, and was responsible for all external programme acquisitions for the two media.

10. In June 1988, Ms. Albert was promoted and given responsibility for programming and televising, which she said was a senior managerial position, with the title of Assistant Director for Television. In addition to her previous responsibilities in planning, she was also in charge of Operations and Production. When her recommendation for promotion was made, however, confirmation was refused by the Secretary of State for Administration, on the basis that Ms. Albert required a further three years of experience. It was proposed that she be put against the post, but with a lower salary level pending the additional years of experience.

11. By letter dated 2 November 1988, the Ministry of Education, Information and Youth requested reconsideration of that decision by the Secretary of State. In that letter, which was entitled, "Promotion: Claudette Albert", it was stated as follows:

> This ministry recommends that you reconsider the decision in respect of the above-named as her promotion to Asst. Direct – EP 44 is strongly recommended. Mrs. Albert has proven to be very efficient and devoted to her work.
> She has demonstrated very high leadership and decision-making skills and is highly motivated. To hold back her promotion may cause her frustration especially in view that all her other colleagues are being promoted.

12. The response of the Director General, which was dated 23 November 1988, provided as follows:

> Whilst I appreciate that Mrs. Albert possess (sic) all the qualities of an exemplary worker, I find it very difficult to make an exception and allow her promotion from an EP35 post to an EP44 one thus skipping the EP39 step and causing a serious precedent. Worse is the fact that she neither meets the criteria for promotion to EP39 nor to EP44.
>
> In recognition of her hard work, approval has been conveyed for her to be promoted to EP39 level initially. Further to this, I am prepared to consider her acting appointment simultaneously as Assistant Director at EP44 for a period of twelve months at least effective from 1 August 1988.

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[2] Hearing No.28 of Wednesday 13 November 2019.
[3] Hearing No. 28, of Wednesday, 13 November 2019, Claudette Albert; Hearing No. 52, of Tuesday, 3 March 2020: Anne-Marie Collet; Hearing No. 52, of Tuesday 3 March 2020: Mr. Antoine Onezime; Hearing No.95, of Tuesday 28 July 2021: Ibrahim Afif.

13. The evidence on her file establishes that Mrs. Albert was an exemplary and hardworking employee and highly valued by her superiors. She was considered competent to take on responsibilities that were generally considered to require more years of experience, and her superiors were willing to advocate on her behalf for her talents to be recognised and appropriately rewarded.

14. Ms. Albert claimed that in 1992, with the reintroduction of multiparty democracy, RTS was to become independent from the Government and would be given a new name, Seychelles Broadcasting Corporation (SBC). Given her senior position at RTS, Ms. Albert said she was on the Management team charged with the transformation, and she worked on the draft laws.

15. On 1 May 1992, there was a transfer of all staff from the RTS to the new institution, SBC. There was a list that informed staff of their transfers, but Ms. Albert recalled that her name was not on that list. On 11 May 1992, Ms. Albert was summoned to the office of the new Managing Director, Mr. Ibrahim Afif. He informed her that he did not wish to keep her on his staff as he did not feel that she would be loyal to him. He further told her that when he applied for the position, he was told that he could choose the staff he pleased. Mr. Afif told Ms. Albert that she should take her leave and report to him on 11 June 1992.

16. On 9 June 1992, Mrs. Albert wrote to the Chairman of SBC, Patrick Pillay, submitting that she had been wrongly treated by the Managing Director, Ibrahim Afif. In that letter, she stated in relevant part as follows:

> On Monday 11th May I was summoned to Mr. Afif's Office and was told that I should take my leave and report to him on 11th June.
>
> He informed me that he did not wish to keep me on his staff as he did not feel I would be loyal to him. He further stated that when he applied for the job he was told that he could choose the staff he pleases to work with.
>
> [. . .]
>
> I was not the least surprised by what happened on 11th May as Mr. Afif had indirectly made his intentions known to me as from 2nd May when he provoked me by pulling the transmission plans from my hands and issuing his own instructions to the Transmissions Director – Mr. Danny Finesse.
>
> He even changed the signature tune without my knowledge.
>
> [. . .]
>
> I took no notice of these insinuations and assumed that things will return to normal once the new Managing Director settles down and gets things organized.
>
> Instead I was asked on 11th May to leave by the back door after 10 years of loyal service.
>
> [. . .]
>
> While on my months leave I have mediated and wondered why a person with my experience has been asked to leave quietly by the back door.
> I would like to enlighten you with a couple of incidents which occurred over the last couple of months.

In January I was warned by a certain advisor that there is talk en "Haut-Lieu" that I had "gone over" to the opposition following the broadcast on RTS of a feuilleton on the events that lead (sic) to the down-fall of the Shah of Iran. I was also warned that if I continued to attend opposition meetings I may end up in a documentation centre or archives somewhere.

I explained to the person that being involved in the media I have to know what is going on in the political scene of my country and that I also attended SPPF meetings whenever I could – for example

I attended the first SPPF public meeting at Anse Boileau (President René sat next to me on a retaining wall by the Community Centre and Minister Michel greeted me after the meeting).

"Complot Joubert"
When I learnt that RTS was going to broadcast a news item on the above I voiced my concern to the Director General and informed him that I had a copy of the tape and it could be sourced to 1987. He informed me that he has nothing to do with the matter and that the Assistant Director – News Mr. Ibrahim Afif had received his instructions from 'above'.

The following day at the editorial board meeting I voiced my concern against broadcasting that story as it would tarnish our image as credible broadcasters.
I even begged the Assistant Director News to please inform whoever wanted us to broadcast that story that a lot of people had the original tape and once we broadcast the copy with the phrase "11 an pase" omitted we would lose the last inch of credibility we had.

I was not happy and blamed Mr. Afif for not making an effort to drop the story and could not figure out why he aired the English version the following day.

Security Clearance
I was due to travel to France on 8th April to attend the Annual Television Programme Market for buyers from 10th - 15th April.

On Friday 3rd April I was informed by the Director General Mr. Patrick Berlouis that I have not received security clearance to proceed overseas.

We both assumed it must be a mistake. I then asked my husband Mr. Gilbert Albert a Senior Police Officer to raise the matter with the Director of Security Services, Mr. Dobin Samson on Saturday when he goes to the airport.

To his amazement Mr. Samson said he had nothing to do with my security clearance and suggested that it could have originated from my Minister – meaning the Minister for Finance and Information Mr. James Michel.

My husband also expressed his fears to Mr. Samson on what could happen if the security clearance documents is leaked to a newspaper and create a scandal involving French cooperation as they were sponsoring my trip to France.

On Monday 6th, the Director General contacted Mr. Samson on the matter. He referred Mr. Berlouis to the President saying that my husband intended to put the story in 'Regar'.

Again I was summoned to the Director General's Office and at that point I decided to ask for an appointment with Minister Michel.
I saw him on Tuesday 7th at 9.00a.m. He confirmed that he was not aware of the problem and ask me not to worry.

On Wednesday 8th April the Director General was informed that it was a case of "mistaken identity". I was given subsistence allowance and allowed to travel the same evening.

> Redeployment
> On 11th May I was told by the new management verbally that my services were no longer required.
> On 2nd June Minister Belmont informed me that SBC has requested that I should be re-deployed.
> He offered me a job in a documentation centre in External Relations or a post as administrative officer in the Local Government.
>
> I would now like to put a few questions to you Mr. Chairman.
> Why has SBC requested that I should be re-deployed after 10 years of loyal service in Television Broadcasting, when I have toiled day and night to make the service what it is today?
> Do you think it is fair that I should be dumped in a job that would signal the end of my career when I know only television?
> Is it for political reasons that SBC has requested that I should be re-deployed to a post where I would not take any editorial decisions?
> Is it because of a certain programme proposal addressing the various political issues during the transitional period which I initiated early this year and copied to your office through the Managing Director a few days before I was asked to go on leave?
> I rest my case in your hands Mr. Chairman and look forward to resuming duty on 11th June.

17. Ms. Albert attached to her appeal to the Chairman a letter of recommendation, dated 16 June 1992, from the previous Managing Director, Mr. Patrick Berlouis, who had left RTS in April 1992. That letter of recommendation, after detailing Ms. Albert's impressive achievements and responsibilities, stated as follows:

> Throughout my time at RTS, I have found Mrs. Albert to be a totally committed worker. She was certainly no clock-watcher, staying on until late in the evenings and coming in on weekends to check and monitor transmission arrangements and programmes.
> She is an intelligent lady, with a surprising breadth of general knowledge and grasp of current affairs. (I say "surprising" because most people of her age group are usually lacking in those two areas). This in my view, allied to her sense of knowing what the general public wanted to see, helped her immeasurably in making judicious and balanced choices in the programmes that we broadcast.
> Apart from her work at the station, I am also aware that she was taking external correspondence courses so as to better enable her to perform her duties, an initiative that is all too rare nowadays.
> I enjoyed working with Mrs. Albert. She had the necessary background, and exhibited the drive and initiative that I required from a senior member of my staff. In my view, there are two aspects of her overall performance that she will need to work on in future in order to become the ideal manager. These are staff relations and communications. She has not as yet, as is the case for the majority of the senior staff at RTS, benefitted from any sort of management training.
> She certainly has the ability to pursue a tertiary level course in any reputed University, or after further management training, occupy a senior level post in the media or other Government agency.
> I am ready to provide a reference for any future job or course application that Mrs. Albert may make.

18. When Ms. Albert reported back to SBC on 11 June 1992, she said she was told to take the 42 days of annual leave that were owing to her and to leave the premises.

19. On 12 June 1992, Ms. Albert wrote to the Chairman of SBC, Patrick Pillay, and complained that she was "harassed" by the Managing Director of SBC, Mr. Ibrahim Afif. In that letter, she stated that upon Mr. Afif's instruction, she was escorted to the gate by his Chief Security Guard, where her personal effects were verified. She stated that she did not think "it is fair and humane to be treated like a criminal in front of all the staff after 10 years of loyal service".

20. On 20 July 1992, Ms. Albert received a response to her appeal to the Chairman of SBC, Patrick Pillay. In that letter, Mr. Pillay advised that "[t]he matter has been discussed by the Board and reviewed

following your appeal. However, I regret to inform you that the Board has reiterated its earlier decision to recommend to the Ministry of Administration and Manpower that you been (sic) redeployed".

21. On 11 August 1992, a meeting was held with Ms. Albert and representatives of the Human Resources Division to discuss potential redeployment opportunities. The minutes recorded as follows:

> PURPOSE OF THE MEETING
> A meeting was convened between HRD representatives and Mrs. Albert to see what are her plans. The position was explained to her and she was advised to state her choice of jobs to assist HRD with the redeployment.
> Few positions were suggested to her – Documentation officer in the Department of Environment, Production Officer at the National Audio Visual Centre (NAVC) in the Ministry of Education or an administrative position at any organization. She was also advised that the Division of External Relations has no suitable vacancy.
>
> MRS ALBERT'S COMMENTS
> a. She said that she was advised to proceed on leave from 11 May from SBC and was later verbally informed that she was to be redeployed. No reason for the decision was given.
> b. She later appealed to the Chairman, SBC as well as to members of the Board. A reply dated 20 July 1992 was received in August only.
> c. She feels she has been given unfair treatment for her 10 years of loyal and devoted services to RTS...so much had she contributed to the television broadcasting, making it what it is today and in return she is to be dumped in a totally different job, which would mean the end of her career.
> d. She saw no motive for redeployment. She was never told of any weaknesses, no warning letters given and the reference from the ex-Director General, Information speaks for itself. She feels that the decision taken by SBC was not justified.
> e. She expressed some interest in working for MEEPER – but it is just that there is no vacancy. As for administrative duties, she showed no interest – her reason is that she does not want to be tied to an office and pushing files. Also documentation at Environment, she feels it is not her field. However, she showed some interest in working for NAVC since it would involve preparing of programmes and somewhat relevant.
> f. She enquired into the possibility of getting a salary increase following the upgrading of her post.
>
> CONCLUSION
> Mrs. Albert was advised that HRD will pursue her redeployment with the Ministry of Education for possibly (sic) vacancy at NAVC. The question of her salary adjustment will be looked into and she will be advised in due course on the position.

22. On the employment file of Ms. Albert was a note written by Mrs. Crea, Director of Personnel, dated 20 August 1992, which stated as follows:

> I have finally reached Mr. Pillay (PSE) today; he advised me that since Mrs. Albert is said to have some personality problems she would not fit in the group. Already there is a lot of problems there and placing Mrs. Albert there, for fear it might only aggravate the situation. I have also discussed with DG Tourism for possible position. She has no suitable vacancy. Ms. Marlene Pool has just returned from training. I recommend that in all the circumstances, we terminate her appointment with all benefits due.

23. A further note of the file, dated 2 September 1992, initialled DP, stated as follows:

> I have advised Mrs. Albert of the non-availability of a suitable vacancy at National Audio Visual Centre, and indicated to her that we may have to terminate her services with payment of full benefits.

> [. . .] she was somewhat worried about her chance of getting employment since she has never been told of the reason for not wanting her at SBC and would preferably like our Ministry to look out for a job for her. I have explained to her that it would be difficult unless she changes her field into one of the administrative side. As for hotel industry she would not like to work there in view of the irregular hours and other conditions. Although reluctantly she has agreed that in the situation she would not mind if we continue pursuing employment for her since she can foresee that she would be out of a job for quite some time. However, she emphasized that if it comes to termination of her appointment failing redeployment she would appreciate if the DG SBC would elaborate on the reasons for the termination of her employment.

24. A further note on file, dated 3 September 1992 and initialled DGHG, stated, "reasons for termination: the interests of the organization". Further notes on the file referenced the position of Senior Education Officer in Environment – Ministry of Environment, Economic, Planning and External Relations (MEEPER), and queried whether Ms. Albert should be transferred from SBC to that position or terminated and start afresh at MEEPER.[4]

25. From a period of four months from September to December 1992, Ms. Albert was seconded to MEEPER. On 18 December 1992, a letter to the Director General of MEEPER advised that Ms. Albert's appointment had been terminated on grounds of redundancy from SBC with effect from 1 December 1992, and that the Ministry could proceed with formalising her employment status with the Ministry.

26. On 29 December 1992, Ms. Albert received written notification from the Director General of the Division of Environment that her secondment period with the Division was terminated with effect from 21 December 1992. There was no evidence on file of MEEPER regularising Ms. Albert's employment with them following the notification of her redundancy from SBC.

27. The Commission recalls Ms. Albert's evidence that following her termination from SBC, she applied for various positions in the Government sector, without success. Ms. Albert stated that during all her subsequent interviews she was asked why she had left SBC and why was she terminated, questions to which she did not have answers. In 2011, she applied for a position at the *Nation*, and was successful in securing the position. However, she was terminated from that position within three months. She took the *Nation* to the Employment Tribunal, and they paid her for their lack of notice.

28. Documents on Ms. Albert's employment file included a letter of 30 March 2012, from the Human Resources and Budget Manager of the Nation on behalf of the Chief Executive Officer, advising Ms. Albert that her employment would be terminated with effect from 31 March 2012 for failing the probationary period. Ms. Albert lodged a grievance with the Ministry of Labour and Human Resource Development and was invited to attend a mediation in accordance with Section 61 (1A) of the Employment (Amendment) Act 2008. The mediation took place on 9 May 2012, and resulted in both parties signing a Mediation Settlement Agreement.

29. The Summary of Mediation recorded as follows:

> Ms. Albert contested the unlawful termination of her contract of employment in reference to the probationary period stated in her certificate of employment and the contents therein letter of

[4] On 28 October 1992, Mrs. Albert advised the Principal Secretary of Ministry of Administration and Manpower that she had been nominated for an award by the Union for Radio and Television Organisations of Africa for her notable contribution to its development over the years. She requested assistance in the form of return airfares and per diem to allow her to participate in the ceremony and accept the award. There is no evidence of a response being made on file to that request.

termination dated 31st March 2012. The Respondent first argued on the attitude of the Applicant. This argument was made redundant when the Competent Officer elucidated the legal implication of probationary period within Fixed-Term contract of employment. Respondent agreed to pay the Applicant all legal benefits to 31st March 2012 together with SR 980.90- being an outstanding payment for mileage amounting to SR 44,004.80, excluding 15% tax (P.I.T), to settle the matter. The Applicant considered the proposition.
Agreement was reached on these terms.

30. Ms. Albert stated that she has been denied her right to work in a job of her choice because of the reputational damage she suffered as a result of her termination from SBC. Ms. Albert claimed that each time she applied for a position, it always went back to that termination, which thus hindered her progress. Unsuccessful in obtaining employment, Ms. Albert began her own business as a consultant and became involved in civil society as a member of an NGO involved in women's advocacy.

31. Ms. Albert says that the discrimination against her has also harmed her daughter. Ms. Albert stated that her daughter had finished her A levels at the Independent School and she wanted to study law. To help her get an attachment, Ms. Albert put Dolor Ernesta, CC Member for Anse Aux Pins, as her reference, with his agreement. Her daughter undertook various attachments with the Ministry of Finance, the WTO, and the Port, and was making applications to join the legal profession. She wanted to work at the Attorney-General's Office, and she applied but could not get in. Ms. Albert told her daughter to only put her father's details on her application. Her daughter was called and asked to send her mother's identification details also. Her daughter complied, and within minutes she received a 'no'.

32. Ms. Albert submitted that she had been deprived of her choice of career in the media, having been trained and having worked in that field for 12 years after leaving school and having done exemplary work as indicated in her employment file. She underscored that private media, except papers affiliated with political parties and religious bodies, was non-existent in those days, and only appeared recently. Her efforts to gain work in Government, being the largest employer over the years, were unsuccessful. She recalled that on the one occasion she successfully obtained employment with the State-owned Nation newspaper, the experience was short-lived. After three months on a two-year contract, her contract was terminated, and she received a rather bad reference, which she stated was contrary to the law. She sought redress through the Employment Tribunal and won her case at arbitration. She was paid due notice, and a new employment certificate was issued.

33. Ms. Albert stated that her marriage and 30-year relationship broke down under the pressure of trying odd jobs to survive, pay their bills, and honour their commitments. In brief, she claimed that she was marginalised and made to feel like an outcast. Ms. Albert claimed she was even advised to leave the country.

34. Before the Commission, Ms. Albert stated that she was seeking monetary compensation, as she claimed was agreed by the sitting SBC CEO in 2017,[5] for all the years of hardship endured over the past 30 years and the destruction of her media career and progression in television. She reiterated that SBC remained the only station until quite recently. Ms. Albert also requested a written apology and acknowledgement of responsibility from SBC and the Government for this unfortunate incident.

35. Prior to coming to the Commission, Ms. Albert had filed her case with the Anti-Victimisation Committee. The case was heard by the Anti-Victimisation Committee on 5 July 2018. Mr. Antoine Onezime, the CEO of SBC, at the time, represented SBC at the hearing. He agreed that there had been

[5] *See infra* para. 35.

certain injustices to Ms. Albert and "somewhat agreed to find means to remedy the matter". However, the hearing of Ms. Albert's complaint was ultimately found to be time-barred by the mandate of the Anti-Victimisation Committee, and no recommendation of a remedy could be made.

36. Ms. Albert made a complaint to the Ombudsman concerning the failure of the National Assembly to take any remedial action following the hearing of her complaint of victimisation. The Ombudsman noted that the Anti-Victimisation Committee had heard her complaint, notwithstanding the time limits on its mandate. Clause 12.1 of the Committee's legislation provided that "all complaints arising prior to the approval of the (the Committee's) terms of reference by the National Assembly shall be lodged within six months of the approval date"; and Clause 12.2 specifically provided that "Always the committee shall not hear complaints arising more than 5 years prior to the same approval date". The Ombudsman found that "this provision clearly limited its mandate to hearing complaints of victimization relating to events that would have occurred roughly after 2012". Accordingly, the complaint of Ms. Albert was deemed to be out of remit. The Ombudsman further found that the Anti-Victimisation Committee "was wrong and acted in poor judgment of its own rules by hearing a matter over which they clearly had no jurisdiction". The Ombudsman further stated as follows:

> Meanwhile, with the aim of moving ahead and based on the AVC's finding on your original complaint that the termination of employment by the RTS did constitute an element of victimization, I am of the opinion that your complaint should be referred to the Truth, and Reconciliation and National Unity Commission established under Act 9 of 2018.

B. Evidence of Mr. Antione Onezime

37. The Commission called Mr. Onezime concerning the evidence he gave before the Anti-Victimisation Committee. Mr. Onezime advised the Commission that based on the records in the file, there was nothing to justify the termination of Ms. Albert. He advised the Commission that Mr. Ibrahim Afif had taken the decision and that he did not know why that decision had been taken.

C. Evidence of Ms. Anne-Marie Collet

38. The Commission recalls that Anne-Marie Collet appeared as a witness before it on behalf of Ms. Albert.[6] Mrs. Collet told the Commission that she did not know why Ms. Albert was the only person asked to leave the organisation, referencing RTS/SBC, as everyone else working for RTS was automatically transferred to SBC. She claimed that only Ms. Albert was not transferred, and she held a very senior position as Assistant Director. Mrs. Collet's evidence was that while she was shocked at the decision not to transfer Ms. Albert, she was also not surprised. She thought that the new General Manager, who had previously held the position of Assistant Director – News, was "not feeling very secure", and all the staff had thought that Ms. Albert, holding the post of Assistant Director for Television, would have applied for the position of General Manager, but she did not. Mrs. Collet thus insinuated that the incoming General Manager could have perceived Ms. Albert as a threat.

39. Mrs. Collet also advised the Commission that RTS had been the media for the SPPF party, and it remained so upon its transformation into SBC. She stated, "it was just a change of name, and the political influences remained the same".

D. Evidence of Mr. Ibrahim Afif

[6] Hearing No. 52 of Tuesday, 3 March 2020.

40. The Commission called Mr. Ibrahim Afif to answer the claims of Ms. Albert, and he appeared before the Commission on 28 July 2020.[7] In his evidence, Mr. Afif advised the Commission that Ms. Albert was employed by the Department of Administration and Information in approximately 1978 as an Assistant Reporter attached to the Seychelles *Nation*. She was then transferred to the Documentation Centre at Radio Seychelles/Nation Publishing. Thereafter, she was transferred to SPPF Documentation Centre at Maison du Peuple. She then transferred to RTS/Information Department as a Documentation Officer at the TV Section in 1983. Following internal organisation within the TV section at RTS, she ended up in the Foreign Programme Acquisition Section, and in 1992, just before the creation of SBC, she was Assistant Director - Programmes Acquisition.

41. Mr. Afif informed the Commission that he was interviewed by two panels for the post, including the Secretary of State, Finance, Norman Weber, and the Presidential Advisor, Abu Omeruddy. Mr. Afif was then called to an interview with President René, in which President René offered him the job of Managing Director. In the discussions that followed, the President asked Mr. Afif whether there was anyone that he would find difficult to work with, and Mr. Afif recalled that he responded that there was one person and named Ms. Albert. After he had done so, he said, he thought he had made a mistake, as he had just been appointed Managing Director and then admitted to the President that he could not manage people. He then asked the President whether Ms. Albert could be moved prior to Mr. Afif starting as Managing Director, but was told no. Mr. Afif would have to move into the role and move Ms. Albert himself, however, he would have the Government's support. Mr. Afif stated that as he left the office, he thought it was wrong to have said he would not be able to work with Mrs. Albert, what he would do would be to keep her on and give her a chance.

42. Mr. Afif was told about his appointment roughly one month prior to it being published, and he had to keep it secret until it was published in late April. Mr. Afif kept it secret apart from his family and some close friends at RTS/SBC. Mr. Afif recalled that he heard some names being discussed in front of him, and was even asked whether he would be the chair.

43. About a week or 10 days prior to the ending of RTS, the Director General, Patrick Berlouis, announced that he was departing RTS Management. He had been offered the post of Principal Secretary of Environment, but had turned it down. Mr. Afif recalled that he was sat opposite Ms. Albert during that meeting, who stated something along the lines of: "la mon demande ki sennla ki pe donn nou hard time".[8] Mr. Afif made no reaction to this news, but he recalled that he thought that she was going to give him a hard time. He claimed that Jude René, the Chief Engineer, later said to him, "you are usually very vocal, but you said nothing". Mr. Afif stated that he remained quiet because he did not want Mr. Berlouis to suspect that he knew anything.

44. The announcement of Mr. Afif's appointment was made two to three days before the actual appointment was made. Up to that time, he had been thinking that he would keep Ms. Albert, but after the announcement of his appointment, it was reported to him that Ms. Albert said, "Donn mwan 3 mwan mon a kas son lipye",[9] which Mr. Afif understood to mean that she would undermine him. Mr. Afif noted that he had been given the opportunity to remove her, and if he did not do it now and something did not work out, he would "have nothing to say" as he had the opportunity to make up the team he wanted.

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[7] Hearing No. 95 of Tuesday, 28 July 2020.

[8] TRANS.: "now I wonder who is giving us a hard time".

[9] TRANS.: "Give me three months and I will break his leg".

45. Mr. Afif advised the Commission that while Ms. Albert had an "attitude problem", he also considered that he wanted people with hands-on experience in doing programmes. Mr. Afif recalled that he had to reorganise the system and the post that she occupied would have been made redundant. He took a few days before he finally decided what to do. He told Ms. Albert that he could not include her in his team, and he believed he had said "I have no confidence...". He noted that he had heard from people with previous experience working with her that she would pick up the *Nation* and mark up the mistakes, and send it to the Principal Secretary of the Ministry of Education, which was not her role. Mr. Afif stated that he never saw any of this, but he knew he was not at the top of her list of favourite persons. Mr. Afif stated "there were a few incidents here and there, but it was hard to pinpoint them". Mr. Afif recalled he believed she would be redeployed by somebody given her experience.

46. Mr. Afif noted that SBC was created on 1 May 1992, but the appointment and actual finance and administrative functions were not done until September 1992, and his letter of appointment was for September 1992. Mr. Afif noted that the delay in his dealing with Ms. Albert, was created somewhat by these delays in transition of powers.

47. Mr. Afif claimed that he told Ms. Albert that he wanted hands-on programme managers, and informed her of her redundancy, which would include compensation, her gratuity, and possible re-deployment in Government, however, redeployment was up to the Government as SBC had no say in that. He requested that she take leave, pending resolution of her re-deployment, and she appealed to the Board. Mr. Afif said he was not present when the Board discussed her appeal, and the board was chaired by Mr. Patrick Pillay, the first Chair of SBC. Mr. Afif recalled that the board upheld his position. He also noted that he had not told the board the prelude to what happened with him having been granted leeway to choose his team. Mr. Afif recalled that the Department of Public Administration handled Ms. Albert's immediate transition and the appeal to the board.

48. Mr. Afif advised the Commission that Ms. Albert had never produced a local programme. He recalled that he received a call from the French Embassy, who complained to him that they were not broadcasting enough French programmes, and they had someone who was prepared to do French programmes on TV. Mr. Afif did not know who they were proposing for this position, and he had said "yes, no problem". He later found out that it was Ms. Albert and said, "no problem okay". She came and would have access to the French feed, French news, French programmes, and the like. He instructed the staff working on this programme that she should be assisted with materials and whatever she needed. Ms. Albert did the first programme, and Mr. Afif thought she also did the second. Mr. Afif recalled when the third was meant to go out, he was on leave, but when he returned, he was told that it had not gone out. He asked why and recalled that Ms. Albert told him it would not be ready. Mr. Afif told her it was not his fault, and she agreed, as he had not been there. Mr. Afif claimed that he subsequently asked about the matter and was told that someone helping her had declined to continue helping her. Mr. Afif recalled that as a basic reason, and that was it. Mr. Afif recalled the program stopped as there were no requests for further programs and that was the end of it. As the program had stopped Ms. Albert's post was made redundant.

49. Mr. Afif reiterated that he was the Managing Director, and it was up to him to do whatever in terms of management. Initially, he said, he kept the RTS staff and if someone left, he would try to just move staff internally. When asked if a system of advertising positions for application and interview may have been fairer, Mr. Afif stated he could have done that, but had not thought of it in those days. He would move people internally, which was the tradition that had been in place.

50. When asked about the impact the unsuccessful redeployment of Ms. Albert, Mr. Afif stated that he did not think the fact she had been let go from the SBC had tempered her ability to be successful in other

roles. Mr. Afif stated that he did not believe that security clearance would have played an issue in Ms. Albert's future employment. Mrs. Albert noted that she had received employment, albeit temporarily, in Environment, and again in Information which indicated that there were no issues with security clearance. Mr. Afif explained that he had never stopped her from getting a job anywhere else in government; he had simply decided she would not form part of his management team.

51. When asked for clarification on Ms. Albert's role before she departed from SBC, Mr. Afif informed the Commission that Ms. Albert was working as the Head of the Program Planning Division. Mr. Afif recalled that he made one person Head of Programs Production and the Schedule. Mr. Afif recalled that the person who became head of production was Anne Marie Collet; and Jean Claude Matombe was made head of programmes, which included scheduling and acquisitions. Both of these individuals reported directly to Mr. Afif.

52. Mr. Afif reiterated that he wanted somebody with "hands-on programmes experience" to be in charge of programmes. He recalled when the post of acquisition was first made, he was controller of TV and James Palmyre was Chief Engineer and reported to the Ministry. Mr. Afif recalled that he and Mr. Palmyre disagreed with who should get the post when it was first created. When Mr. Afif became Managing Director, he had the power to make decisions. He felt that Ms. Albert would be able to be redeployed; although he disagreed with her attitude, he noted that she was always keen to improve herself. Mr. Afif reiterated that he did not feel comfortable having her on his management team.

53. When asked about Ms. Albert's alleged attendance at opposition meetings, Mr. Afif stated that it had not played a part in his decision, and that he did not have knowledge of it. Mr. Afif recalled that he had thought Ms. Albert was part of the party, but regardless, Mr. Afif stated he did not discriminate against anyone on political affiliation.

54. Mr. Afif recalled that there was broad discretion to make redundancies and get someone new; at least that was what the SBC had been told. He stated that in practice, he did discover "the freedom had qualifications", and there were instances when someone applied for a job, and he received a call about whether or not to employ the person. He stated that there was interference from "higher up", and political affiliations remained an issue. Mr. Afif claimed that he never took it upon himself to believe it was an independent SBC. Mr. Afif recalled that when the SBC Act was first drawn up it was called the Seychelles Independent Broadcasting Company, but the President had crossed out "independent" and said "what independence? They will be independent when they can fund themselves".

55. Mr. Afif recalled that he left SBC in 2009. When he left, he had been reappointed in January 2009, but he was removed in August 2009. He claimed that someone had done a lot of plotting against him and suspected something was about to happen. A week before he left, he told his management meeting that by the following week he could be gone. He had been the Managing Director for 14 years and four months; he stated that "some jobs can be for life". He was told that the President needed someone to help the Media Commission, and he accepted. He said he had no option and was asked to resign. Mr. Afif stated that he never felt that his Ministry had anything against him, but he sensed what would happen from his experience of other people whom SBC had dismissed during his time. He recalled two people, one of whom was redeployed within the organisation and the other was to be sacked. He argued for the one that was going to be sacked, but was told that the Minister had already made up his mind. Mr. Afif stated that there was no hostility. Mr. Afif was expected to toe the line, and he stated that he "tried [his] luck at pushing the boundaries".

56. Mr. Afif claimed that during the 1993 Indian Ocean Games, all phone lines were blocked, and they could not make international calls. During the Indian Ocean Games, they had to communicate on the

spur of the moment. When the bills arrived, he saw that calls had been made to Hong Kong and other places. The next month, when a bill arrived showing other suspicious calls, he decided to investigate. He went to the office at around 6.30 A.M. and determined to find the phone. He went under the table, tested all the sockets, and discovered one was open. Mr. Afif stated that two members of staff walked in and observed what he was doing.

57. Two weeks later, Mr. Beaudoin, one of the staff members who observed him, asked him whether Mr. Afif was bugging people. Later, Mr. Afif stated that he went to the Ministry, and when he went in, he was asked whether he was spying and was given a report. Mr. Afif stated that the spy at SBC would report to another spy. Mr. Afif explained to the Minister what he was about, but noted that there were people like that who would make false accusations against people.

58. Mr. Afif informed the Commission that there was political interference with the State-run television station that extended way beyond 1993, and that people who were unfairly dismissed found it difficult to get another job. He stated that he did not think Ms. Albert had a political agenda, but people were always reporting on one another.

59. During a subsequent appearance before the Commission, Mr. Afif responded to the claims of Ms. Albert, stating that he never put anything in her file, but just removed her from his management team, as he did not have confidence in Ms. Albert and a belief that she might undermine him. He reiterated that he thought she would be redeployed, and did not know much about her career after SBC.

E. Response of Ms. Albert

60. Following Mr. Afif's evidence, Ms. Albert requested and was granted a right to reply. Ms. Albert claimed with reference to the evidence of Mr. Afif that she had "never heard such a tall story".

61. Ms. Albert reiterated that in May 1992, she received the first letter telling her to go on leave, and she then went home. When she returned in June, Mr. Afif told her he did not trust her. Ms. Albert reiterated that she went to events for both political parties as part of her job, and there were likely spies at these events who informed to Mr. Afif. Ms. Albert stated that it was implied that her independence from either party was what made her seem untrustworthy to Mr. Afif. She was then seconded until her salary was terminated in December.

62. Ms. Albert claimed that Mr. Afif was not happy because Mr. James Michel had set something up for Maison Du Peuple for education, and sent her to TV. Mr. Afif and she fell out because Mr. Afif was not happy with the seven days of television. Mr. Michel wanted it but Mr. Afif did not.

63. Ms. Albert recalled that when making the Complot programme, Mr. Afif called her into his office and told her the story of Simon Desnousse,[10] and admonished that she should never repeat it to anyone. He told her in confidence, so Ms. Albert claimed that he trusted her then.

64. Ms. Albert claimed that the Assistant Director of Television found her to be hardworking and resourceful. She stated that because she was ambitious, she was hard-working. Ms. Albert further stated that she would tell Mr. Michel "when things went wrong", and that Mr. Michel respected her.

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

65. Ms. Albert claimed that when she went before the Anti-Victimisation Committee, Patrick Pillay, the Chairman of the SBC Board, apologised to her. Ms. Albert noted that Mr. Afif never wrote anything "dirty" on her file. He had been given a mandate by the President of the Republic.

66. Ms. Albert claimed that she applied for numerous jobs in Government, but she was not selected. She again recalled that she was eventually hired by the *Nation* in 2011, but was let go after only three months. She claimed that the last time she lost her job, her ex-husband had been seconded to work as the personal guard of Mr. Mancham, and it was just after this that she lost her job at the *Nation*.

67. Ms. Albert claimed that she tried to apply again for jobs in the public sector, the last time having been in 2017. That time, she was refused on the grounds that she did not have a degree.

68. Ms. Albert claimed that her career was destroyed by a network of spies who caused her to be blacklisted in her own country.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

69. 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".[11] These principles must guide the Commission's determination of whether the conduct alleged constitutes a human rights abuse pursuant to its Act.[12]

70. 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.[13]

71. 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".[14] Any finding of individual responsibility is to a balance of probabilities standard.[15] In that regard, the Commission, underscores that any such determination of individual responsibility is not made in a criminal legal sense, but rather to reveal the truth about events that occurred during or in relation to the Coup d'état of 1977. Thus, the Commission interprets Sections 3(9) and 6(8)(a) of the

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

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.

72. 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".[16] 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.

73. 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.

74. 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.

75. 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.

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

B. Approach to the Evidence

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

77. 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.

78. 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.

79. 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.

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

C. Merits of the Case

1. Wrongful Termination of Employment

81. The Commission finds it established to a balance of probabilities that Ms. Albert was wrongfully terminated from her position with RTS/SBC in 1992, amounting to the corresponding violation under Section 2(8)(j) of the TRNUC Act.[17]

82. Considering the required admissibility nexus of this violation to the Coup d'état of 1992, the Commission finds that both its temporal and thematic mandate are established. First, the Commission recalls that Ms. Albert was terminated in 1992, during the time of the one-party State and thus during the Commission's primary temporal mandate. Second, the Commission recalls that Ms. Albert was terminated at the pleasure of incoming Managing Director Afif, who was told by President René, who came to power through the Coup d'état of 1977, that he could transfer Ms. Albert off his team. The Commission considers that as this course of events belies the general pattern of the system of political favours, including rewards for party loyalty and sometimes severe consequences for the perception that one was not aligned with the party in power, that was in effect during the time of the one-party State and thereafter, the present claim is admissible before it.

83. The Commission has considered that the violation of wrongful termination of employment under the TRNUC Act consists of the 1) dismissal of a person from their position at work, 2) whether by unlawful or arbitrary means, including but not limited to reasons of retaliation or discrimination, 3) by a

[17] TRNUC Act, sec. 2(8)(j).

perpetrator.[18] The violation applies equally to dismissal of employment from either the public or private sector, and impacts upon an individual's fundamental rights to work, to equal protection of the law, and to non-discrimination on the basis of political opinion.[19]

84. Regarding the first element, the Commission finds it established on the evidence before it that Ms. Albert was employed by the Seychelles Government from 1978 until December 1992, at which time a decision was taken to terminate her contract. As such, the first element is established.

85. Turning to the second element, whether that termination was by unlawful or arbitrary means, the Commission finds that Ms. Albert's employment with the Seychelles Government was more likely than not wrongfully terminated. The Commission recalls in this respect that Mr. Afif gave mixed evidence, in part suggesting that Ms. Albert's position was likely being made redundant as part of the changeover, but also that he fired Ms. Albert due to not having confidence in her to form part of his management team, due to concerns that she would undermine his position. The Commission is of the view that given Mrs. Albert's longstanding employment with RTS/SBC and good review by her superiors, this assumption by Mr. Afif was more likely than not personal and thus arbitrary. While the Commission recognises that the non-renewal of contracts per se is not illegal under Seychelles' domestic legal framework, such an act performed on the basis of one's political affiliation, including lack thereof, or baselessly, given a history of effective employment as here, can be unlawful and even amount to discrimination in employment on political grounds. In that vein, the Commission finds it more likely than not that Ms. Albert was terminated from her longstanding employment with RTS on no more than personal dislike, which the Commission finds is an arbitrary basis, not supported by law. This is further supported by the findings of the Anti-Victimisation Committee, where Mr. Onezime agreed that there had been certain injustices to Ms. Albert's termination decision.

86. The Commission notes that it has assessed Ms. Albert's complaint against the backdrop of the Seychelles Government having invested significantly in Ms. Albert's professional development over the years, with training in France and multiple promotions. The Commission notes that Ms. Albert's work was evidently so exemplary that after being denied a promotion by the Secretary of State due to lack of experience, the Ministry of Education, Information and Youth wrote on her behalf asking that they reconsider, and that this petition was ultimately successful. There is no indication on Ms. Albert's employment file of any concerns with respect to her performance or any indication that her services were in fact no longer required, but rather the contrary: a recommendation from her former superior complimenting her professionalism and efficacy, noting that Ms. Albert would routinely stay late and come in on weekends to get work done, and suggesting simply that she be permitted to undertake further courses to make her even more effective. The Commission also recalls the evidence before it suggesting that Ms. Albert was terminated or perhaps disliked based on her attendance—for media purposes—at opposition events and rallies, thereby indicating discrimination based on perceived political opinion.

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[18] The Commission notes that this violation applies to discrete events, i.e., single acts of firing, either where the State made a direct termination of one or more of its employees in a wrongful manner or where the State interfered with the private employment of an individual resulting in the person's termination.

[19] International Covenant on Economic, Social and Cultural Rights [ICESCR], arts. 2(2) (enjoyment of rights without distinction), 6 (right to work), 7 (right to just and favourable conditions of work), 19 December 1966, 993 U.N.T.S. 3, *ratified* 5 May 1992; International Covenant on Civil and Political Rights [ICCPR], arts. 2 (enjoyment of rights without distinction), 14 (equal protection), 16 December 1966, 999 U.N.T.S. 171, *ratified* 5 May 1992. These rights are also at the status of customary international law. *See* Universal Declaration of Human Rights [UDHR], arts. 2, 7, 23, G.A. Res. 217A (III), 10 December 1948.

87. In light of the above, the Commission finds that the second element is met, that Ms. Albert's termination was unlawful or arbitrary, amounting to a wrongful termination under the TRNUC Act.

88. Considering the perpetrators who bear responsibility for this violation, the Commission finds that the Board of the RTS/SBC, including Mr. Afif and potentially other Government actors, bear responsibility. As such, the Commission does not accord perpetrator status to Mr. Afif but rather finds that the responsibility is borne on an institutional level for the arbitrary decision to terminate Ms. Albert. As President René also played a role in allowing Mr. Afif to make this decision without legal basis, and as the President had ultimate authority over all appointments, promotions, and dismissals in the public service,[20] the Commission also accords Mr. René with perpetrator status for this violation. As one or more State actors were involved in the commission of this violation, the Commission finds that responsibility can also be attributed to the State.

89. The Commission therefore finds that Ms. Albert suffered the violation of wrongful termination of employment under the TRNUC Act, in violation of her human rights.

2. Wrongful Denial of the Right to Employment

90. The Commission additionally accepts Ms. Albert's evidence that she suffered the violation of wrongful denial of the right to employment under Section 2(8)(i) of the TRNUC Act,[21] following her termination discussed above.

91. The Commission finds that this claim is admissible before it as stemming from the foregoing alleged violation. In particular, the Commission finds that its temporal mandate is met by virtue of the fact that the events underpinning this claim commenced in 1992, directly following Ms. Albert's termination from the RTS/SBC. The Commission moreover finds it clear from the evidence before it that Ms. Albert was denied employment with several different branches of the Government through either discrimination or personal victimisation, likely as a form of blacklisting given that Ms. Albert was fired from her previous Government role, for which she was unable to provide reasons in subsequent interviews, and was likely seen as someone not to be associated with. The Commission regards this as a continuation of the climate and unspoken political strategy of the Coup-installed Government, and thus finds that the claim meets the Commission's thematic mandate as well.

92. The Commission has considered that the violation of wrongful denial of the right to employment consists of a systematic denial of a person's ability to pursue a career in their chosen field. It includes a 1) repeated refusal to hire, promote, otherwise interfere with or refuse a person 2) in pursuit of employment in that person's chosen field, 3) for reasons other than business necessity or some other reasonable and articulable basis 4) by a perpetrator. This violation is a fundamental violation of an individual's rights to work and to free choice of employment, and to equal protection of the law,[22] and as above, it applies equally to interference or denial of employment in either the public or private sector.

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[20] In this regard, the Commission recalls the evidence of Willy Confait, who was the Senior Assistant Secretary for the Department of Public Administration around the time in question, who recalled that the power to appoint, terminate, and promote was vested in the President and subject entirely to his direction under the Colonial General Order of 1966. *See* Hearing of Willy Confait, 13 September 2019, Case Determination No. 002: Lewis Betsy: "The General Order 1966 dictated the terms and conditions of those in the public service, this was created in during the colonial times and was updated to the Public Service Orders in 1985".

[21] TRNUC Act, sec. 2(8)(i).

[22] *See* ICESCR, arts. 6-7; ICCPR, art. 14; UDHR, arts. 7, 23.

93. Regarding the first element, the Commission finds on a balance of probabilities that the Government at least indirectly expressed its opposition to Ms. Albert being given a role in any Government department following her termination from RTS. Given the testimony of Ms. Albert indicating her applications to a wide array of positions and the notes in her file indicating an interest in being redeployed elsewhere in the Government and beseeching the Government for assistance in that regard. The Commission finds it established that Ms. Albert's inability to find employment in the public sector was a result of direct or indirect Government decisions. As such, the Commission finds that the Government continued opposition to Ms. Albert's employment created a systematic interference with her ability to gain employment in satisfaction of the first element.

94. Next, the Commission considers for purposes of the second element that Ms. Albert's chosen field was in news reporting, with a specialisation in foreign reporting and programming. As the biggest news outlet, and thus most business in this sector, was owned and controlled by the Government, and Ms. Albert expressed a continuing interest in working for the Government, the Commission considers that her chosen field was also specifically in the public sector.

95. Considering the reason for the systematic denial of Ms. Albert's subsequent employment attempts, the Commission finds that there was more often than not no legitimate reason, or no reason at all, given for the decision to terminate or not hire Ms. Albert. The Commission notes that the lack of any reason given to Ms. Albert by RTS for her termination indicates some form of blacklisting, and further recalls Ms. Albert's evidence of being let go from her secondment with MEEPER, without reason. While the Commission notes there were attempts to redeploy Ms. Albert, the proposed roles were below her skill set, and the roles she illustrated interest in supposedly did not have positions. The Commission notes that following her termination, Ms. Albert was denied a couple of positions due to lack of relevant experience or qualifications.[23] However, the Commission also recalls that when Ms. Albert was able to secure an interview, she was always asked why she had been terminated from RTS/SBC, to which she did not have an answer. The Commission notes the highly politicised nature of the public service at the time, and finds that an individual not knowing the reasons for their termination would likely have indicated to other employers the risk that they were perceived as against the State and had been blacklisted from the public service.[24]

96. As noted above, the Commission recalls that individuals enjoy the right to non-discrimination under the Seychelles Constitution[25] and international human rights law.[26] This right intersects with the right to work under the same legal frameworks.[27] It follows that an individual enjoys their right to work without discrimination on any prohibited ground, including their political opinions. Based on evidence presented before the Commission and considering the political context elaborated in the previous alleged violation, the Commission finds it more likely than not that the Government of Seychelles' refusal to redeploy or hire Ms. Albert within the public sector was grounded in discriminatory sentiments against Ms. Albert's personality and/or alleged political affiliations with the opposition

[23] The Commission notes that lack of experience and qualifications, by itself, is a legitimate reason to decline employment.

[24] While the Commission notes that Ms. Albert was unable to gain employment between 1992 and 2012, the new employer, another Government media outlet, dismissed her three months into a two-year contract, during her probationary period. The Commission notes that Ms. Albert was able to successfully recover a measure of monetary damages.

[25] Constitution of the Republic of Seychelles, Constitution of the Republic of Seychelles (Preparation and Promulgation) Act, 1992, Act 2 of 1992 (21 June 1993), art. 27 (right to equal protection and freedom from discrimination).

[26] ICESCR, art. 2(2); ICCPR, arts. 2, 14; UDHR, arts. 2, 7.

[27] Constitution of 1993, art. 35; ICESCR, arts. 6-7; UDHR, art. 23.

party, again given her previous presence at certain opposition activities. Given her field of expertise and the lack of other independent organisations that were in her field, the Commission notes that Ms. Albert's inability to work in the public sector effectively prevented her from being employed in her field entirely. Therefore, the Commission finds that the third element has been established.

97. Regarding the "perpetrator" prong, the Commission finds that the Government, including its constituent departments and agencies that chose not to re-employ Ms. Albert, bears institutional responsibility for this violation. The Commission considers that Mr. Afif's termination of Ms. Albert likely acted as a signal to other Governmental departments and entities that they should not employ her as she was not to be associated with—which, the Commission reiterates, is an arbitrary basis. As such, the Commission finds that responsibility for this violation is of an institutional, rather than individual, nature, as it was effectuated by multiple actors within the Government of Albert René.

98. As one or more State officials were involved in the decisions to pass over Ms. Albert's applications in violation of her right to employment, responsibility can be attributed to the State for this violation.

99. On the foregoing basis, the Commission thus finds that Ms. Albert suffered the violation of wrongful denial of the right to employment under the TRNUC Act, in further contravention of her human rights.

V. RECOMMENDATIONS ON REPARATIONS

100. The Commission recommends that Ms. Albert be awarded reparations in accordance with the Commission's Reparations policy.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

101. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarized him or herself with the record in Case 057.

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

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson G. McIntyre

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner