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Case No.: 058

The Truth, Reconciliation and National Unity Commission

In the Complaint of the Marina Pool

31 December 2022

Determination on the Complaint of the Marina Pool

Complainant:

Marina Pool

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 Mrs. Marina Pool, who brings her complaint as a victim, was filed on 16 September 2019. Consequently, Mrs. Pool's 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, Mrs. Pool alleged that during the period between 1978 and 1979, the Government decided to build a road linking Baie Lazare central (near the police station) to the Val d'Endor Road, via Dame Le Roi. Mrs. Pool alleged that in building the road, the Government encroached on her land without consultation or negotiation with her. When she protested the encroachment to the Government, she became subject to intimidation by the People's Militia. She further claims that the Government

[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"].

then built three roads on her land without her consent, and in so doing carved up her land into smaller plots separated by public roads, substantially reducing the value of her land. Subsequently, she claims the Government sub-divided her land without her consent and cadastralised the roads. The Commission characterises Mrs. Pool's complaint as alleging abuse of office by a Government official, unjustified acquisition or loss of property, and other acts causing suffering or injury to mental health.

II. PROCEDURAL HISTORY

7. Satisfied that the complaint of Mrs. Pool prima facie alleged violations related to the Coup d'état of 1977, the Commission rendered her complaint admissible on 18 September 2019.

8. On 16 October 2019, the Commission began hearing evidence in the case of Mrs. Marina Pool. The Commission heard five (5) witnesses[2] and also accessed documentary evidence relevant to her claim.

III. EVIDENCE RECEIVED

A. Background Information

9. Mrs. Pool appeared before the Commission on 16 October 2019 to set out her complaint before it.[3] Mrs. Pool informed the Commission that her nightmare, which she said continued to the day she appeared before the Commission, started in the morning of 5 June 1977 when her and her family's peaceful lives were disturbed by what came to be known as the Coup d'état. They heard on the radio that morning that Albert René and his armed gang had taken over the country. At the time, she was a school teacher and her husband ran a little village shop next to the police station in central Baie Lazare. The politicians who were active at the time, including Albert René, knew her family well and Albert René used to drink tea at her house after his campaign in the area. As with almost everyone then, they held a political opinion and the Pools were known as supporters of James Mancham's Seychelles Democratic Party. Mrs. Pool recalled that on one occasion, Albert René tried to convince her husband to join the Seychelles People's United Party (SPUP) as an activist. However, her husband told Mr. René something along the lines of: "Albert we remain friends but we have no faith in your politics" and reiterated that he was a supporter of James Mancham. Mrs. Pool stated that while Mr. René smiled at the time, knowing his character she believes he did not take the remark well.

10. Mrs. Pool recalled that on the morning of the Coup d'état, she and her family were anxious after listening to the radio as they did not know what was happening. At around 10 A.M., a car pulled up at the Baie Lazare police station and three men, some wearing camouflage clothing, disembarked and went into the police station. They were armed to the teeth and looked terrifying. At this point, her husband thought that the situation appeared volatile and decided to close the shop.

11. A few minutes later, they heard loud banging on the shop door and someone outside shouted, asking them to open up. When Mrs. Pool opened the door, an armed man marched inside and said he wanted

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[2] Denis Barbe - Hearing No.23, Wednesday 6 November 2019; Jacques Pool - Hearing No.24, Thursday7 November 2019; Gerard Hoareau - Hearing No.47, Tuesday 11 February 2020; Berthe Luc - Hearing No.146, Friday 23 April 2021.

[3] Hearing No. 18 of Wednesday 16 October 2019, Marina Pool.

cigarettes. When Mrs. Pool told him the shop was closed, he put his gun against her neck and told her that they have taken over the country and that he would shoot her if she did not give him cigarettes. Her husband intervened to get the soldier to put the gun down and told him he would give him what he wanted. The soldier took a packet of cigarettes, paid for them, and left. Mrs. Pool did not recognise the man but was certain he was one of the Coup perpetrators. She was so terrified by the incident that she almost fainted and remained in a state of shock for several days after the incident.

12. Mrs. Pool recalled that as the months went by, the mood in the country changed from that of a happy and peaceful island life to one of fear and anxiety. People were being harassed for their political opinions and some were rounded up and imprisoned without trial. Others were forced into exile because they were Mancham supporters. Her family lived in constant fear that Albert René would send his thugs for her husband at any time because he was quite vocal against what was happening in the country. At night, the People's Militia was active outside their windows, making loud clanking sounds with their guns and hurling abuse just to terrify them. This constant persecution persisted for years. They were followed in vehicles on several occasions by plain clothes men wherever they went. They had to make sure they never moved at night and her husband never went anywhere alone. They lived in constant fear for their personal safety.

13. Mrs. Pool informed the Commission that while other people left the country into exile, they wanted to stay in Seychelles as it was their home. However, they were victimised and subjected to appropriation of property. Mrs. Pool claimed that a considerable piece of her property was illegally sub-divided and stolen by the Seychelles Government. It was not acquired under the law like many other properties at the time. She informed the Commission that her husband's pig farm was forced to shut down at one point and he was compensated with a derisory sum.

14. Mrs. Pool claimed that her house roof had to be replaced entirely due to leaks caused by stone bombardments by SPUP supporters after a political rally. She recalled that they constantly suffered verbal abuse and threats from SPUP supporters due to the proximity of their house to the road. Life for her and her family was a living hell.

B. Loss of Mrs. Pool's Property

15. Mrs. Pool informed the Commission that she inherited the property from her great aunt, Mrs. Edoeska Grandcourt and that she then organised for the transfer of it by virtue of two deeds of sale dated 25 February 1965 and 15th December 1973. Her family lived in an old wooden house on the property, close to the main footpath that serviced the Dame Le Roi sub district. She and her husband decided to build a new home further away from the footpath so that they could enjoy more peace and quiet. Mrs. Pool recalled that they went to great pains to cut the sloping terrain by hand because machinery was scarce in those days. They employed several men and even took part themselves in cutting the terrain and breaking rocks. It was a long exhaustive and expensive process over the period of a couple of years.

16. In 1978, the Government decided to build the present road, linking Baie Lazare to Val d'Endor Road through Dame Le Roi. At the time, the only link was a foot path which acted as a border between her property and that of Mrs. Grandcourt's property. In 1949, the Government purchased land from Mrs. Grandcourt which bordered Mrs. Pool's property. The Government commissioned a land surveyor,

Mr. Guy Savy, to survey the property in 1949 and to define the borders of the land. The Government built a police headquarters and a clinic on the land it had purchased from Mrs. Grandcourt. Mrs. Pool stated that to this day, an old stone beacon from the survey remains visible in the grounds of the police station.

17. Mrs. Pool informed the Commission that her land was transferred to the new land registry in 1985 as Parcel T703; the government land that bordered it was T706. However, contrary to the original sale, the two land parcels no longer bordered each other but had the road built on her land between them. Mrs. Pool recalled that prior to the registration of her land, the late Mr. Florent Payet, the father of ex-brigadier Leopold Payet, asked her if he could widen the footpath on her side of the boundary with Mrs. Grandcourt, so that he could drive his Land Rover up to his house instead of leaving it parked by the police station and walking the rest of the way. Ms. Pool stated that as they were neighbours on good terms, she said it was not a problem and that he could do so. She claimed that later, the Government widened the small motorable road built by Mr. Payet on her land without her permission, and this became a public road. Mrs. Pool informed the Commission that there were neither negotiations with her, nor official land acquisition of her land that was used to construct the public road. She alleged that they stole her land out of spite and that ironically it was Mr. Payet himself who oversaw the construction of the road.

18. Mrs. Pool claimed that after the Coup d'état, Mr. Payet's attitude towards her changed. She believed that the new "*ek nou pa ek nou*" ("with us, not with us") mindset had set in. She recalled that she tried to protest the building of the road on her land and wanted to see Albert René but never got to see him or anyone else. She claimed that the one-party State was in full motion then and she could not do anything but resign herself to the fact.

19. Following the building of this road, the Government built a second road on her land, again without her consent. Mrs. Pool claimed that this time her property was cut in half towards the river at the end of the property which bordered Mr. Joseph Albert's and Mr. Harold Hunt's properties at the time. She protested strongly because the Planning Division had earlier authorised the building of her new home and this road impinged upon that plan. She recalled that she went to see Dr. Maxime Ferrari, then Minister for Lands, in his office at the Botanical Gardens and informed him that the new road, through her property, was unacceptable since she was about to start building her new home on that site. Dr. Ferrari arrogantly told her that if she insisted in her objections, he would make the road path go right through the veranda of the house she planned on constructing. After the meeting, she broke down in tears, feeling helpless, and exasperated. She had nowhere to go for recourse and had no choice but to make a new planning application, tear down the old house, and live in her mother-in-law and father-in- law's home for some months, while she built her new house on the site of the old one. Mrs. Pool informed the Commission that she detested the location of her old house because of its proximity to the road but she had no choice. Her dream of building her new house on the side she had chosen had been dashed; she was just devastated. Mrs. Pool claimed that there was no formal land acquisition made nor any compensation offered to her. She claimed it was a clear case of malice, victimisation, and theft since there was enough space on the left of the place where she had planned to build her home to build a second road if the Government consulted her. Mrs. Pool advised the Commission that these were the days when the regime did as they wished with impunity. They built the road on her land without her consent and there was nothing she could do about it.

20. Mrs. Pool informed the Commission that years later she sub-divided some land to sell to her old nanny who looked after her when she was a child, and another nanny who watched over her kids while she worked; both of them were staying on her property. Mrs. Pool stated that she took care to leave the road out of the sale as she may have been able to claim for compensation in case circumstances changed. Mrs. Pool alleged that this wish was not respected by the survey division as the road was surveyed and appeared on the cadastre as a separate piece of property. In 1985, she went with her son to see Mr. Chang-Tave at the Survey Division and was rudely told to take her papers away. Mrs. Pool claimed that they did not bother to look at her case and could not care less about the mental trauma it caused her.

21. Mrs. Pool claimed that the Government continued to build a third road on her property. This time, the Government illegally sub-divided and cadastralised her land into parcels T1928, T1929, T1930, and T1931 in November 2002. She claimed that this illegal sub-division diminished the value of her property, which was prime property strategically located in central Baie Lazare. The second and third roads were illegally cadastralised as T1928 and T1930 respectively. There was no mention of the first road which they previously expropriated from her. Mrs. Pool claimed that her land now bordered a motorable road instead of the Government's property and the Grandcourt's. The land on which the road was built was stolen from her and her boundary was moved to accommodate their theft.

22. Mrs. Pool stated that with the advent of multi-party politics and the return of Mr. Mancham from exile, the political climate changed and the opportunity for compensation presented itself, or so she thought. She engaged Mr. Christopher Gill, who was a lawyer and one from Mr. Mancham's entourage, to initiate proceedings for her to obtain compensation. Mr. Gill did not get very far and the proceedings were terminated by a letter dated 8 January 2007, in which the Government made an offer to pay her a mere pittance of SR 63,000 for the third road on parcel T1928 and a part of the road they cadastralised as parcel T1930, which they illegally sub-divided and registered without her knowledge or consent. The letter came in two copies, which she refused to sign as acceptance of the offer. She noted that there was no mention of the first road nor the second part of the T1930. Mrs. Pool persevered in requesting the Government to recognise her property's original boundary. She received a response from Mr. Denis Barbe from the Ministry of Land Use and Habitat, whom she understood today holds the position of Principal Secretary in the same Ministry. She misplaced the letter and could not recall its date. However, she recalled him telling her there was no compensation for the first road as it was not her land. Mrs. Pool claimed that even though he was a qualified surveyor, he ignored the survey done in 1949, which defined the border between her property and the Government's land purchased from Mrs. Grandcourt. She alleged that Mr. Barbe merely justified the Government's theft of her land.

23. Mrs. Pool informed the Commission that the lives of her and her family were shattered due to events that followed the Coup d'état. Today in her old age, she still lives with distress for not being able to obtain justice. She stated that her only hope lies with the Truth, Reconciliation and National Unity Commission to do so. Only then would she be able to find the courage to attempt and reconcile with the past.

24. Mrs. Pool sought the following rectifications and restitutions: (i) Recognition from the Government that their actions have caused a great injustice towards Mrs. Pool and her family, which resulted in significant mental torture over the years; (ii) Recognition from the Seychelles Government that the original border of the land she purchased from Mrs. Grandcourt, which was demarcated by the 1949 survey, and which proves that the first road was built on her land; (iii) Recognition from the

Government that their actions of sub-dividing her land into islands separated by roads devalued her land; (iv) Since the three roads are now part of the community and cannot be removed, full compensation for all lands taken from her, including the land on which the first road and the second part of the second road that, she alleged, they maliciously failed to demarcate. Mrs. Pool requested that the compensation take into consideration all the damages done to her property and the mental trauma caused to herself and her family over the years.

C. Evidence from Other Witnesses

1. Evidence of Mr. Denis Barbe

25. Following the hearing of Mrs. Pool, the Commission called Mr. Denis Barbe on 6 November 2019.[4] Mr. Barbe informed the Commission that he was unable to provide much information about Mrs. Pool's complaint because some of the particulars dated back to the 1970s and early 1980s. While there was a land file for the particular matter, he only perused it when he wrote a letter to Mrs. Pool in 2011 as a response to a query concerning road encroachment on the property. Mr. Barbe also stated that he was unable to enlighten the Commission with regard to the sub-division of the property and the alleged building of the road on the property itself.

26. Mr. Barbe shared with the Commission information based on the site visit conducted in 2010 or 2011 by the Ministry of Land Use and Habitat, which was headed by the Minister to investigate the matter of the road encroachment onto the parcel of land. As Director of the Survey Division at the time, Mr. Barbe's responsibility on the site visit was to study the case, conduct research, and establish exactly what transpired from a survey perspective.

27. During the site visit, Mr. Barbe discovered that somebody from the Ministry had done research in 2004 in relation to Mrs. Pool's claim regarding the secondary road that abuts her property, which he believed to be the Dame le Roi Road. His research roughly confirmed the findings of 2004 survey. Mr. Barbe noted that there was no cadastral system in the past as there is currently; properties were defined by boundary beacons or by collinear boundaries where there are soft boundaries. A soft feature can constitute roads, rivers, or any physical features identifiable on land. The fixed boundary system was not adopted until much later. Initially, all land transactions were also done under the old register through the sales of deeds. While this system is still in use today, the parcel number system is more precise.

28. Mr. Barbe noted that they started the Land Registration Project (LRP) in Mahé the 1980s. The main objective of the project was to first survey the land and subsequently register it so that the property can be defined. Mrs. Pool's property was first surveyed in 1984 and identified as T703 under the LRP. Where there were disputes about boundaries, legal provisions provided for the appointment of adjudication officers who had the power to preside over such disputes and to make decisions. Seychelles was not surveyed and demarcated in one go; it was separated into different blocks and done systematically to ensure that all the disputes were adjudicated upon following proper procedures.

[4] Hearing No. 23 of Wednesday 6 November 2019.

29. According to Mr. Barbe, records on file demonstrate that the research done in 2004 concluded that there was no road encroachment on Mrs. Pool's land. He noted that the inconsistency which he had seen in the file from a technical point of view turned upon how the survey was done to establish whether or not there was an encroachment. He stated that when you went back to the actual title deed of the property of Mrs. Pool, the description in the deed states that the boundary of the property is from the public road to the abutting property of the government land and the road link to the property of Mr. Payet, which translates to C5084. C5084 is the property above that of the Pools'. Mr. Barbe noted that while it would be difficult for him to establish when the road was built, documentation from the title deed setting out the original sale of the property evidences that there was in fact a road at the time of the sale. However, he was unable to determine the width of the road or whether there was any road work done prior to that or thereafter. In any event, Mr. Barbe stated that Mrs. Pool had an opportunity to put her complaint forward, which she did not.

30. Mr. Barbe advised the Commission that an adjudication process to establish the boundaries of a property forms part of the approval of the surveys before the land is registered. If Mrs. Pool was dissatisfied with the boundary set out in the survey under the LRP, she could have lodged her dissatisfaction before the land was actually registered onto the new land register. Mr. Barbe claimed that the records in their possession did not show any evidence of an objection to any encroachment. Mr. Barbe further noted that any claims filed by Mrs. Pool with the Ministry of Land Use would have been a separate issue to the land registration file. He had no access to files with the Ministry, although such a file may establish whether she had made a claim, whether it was heard, and whether the adjudication officer made a decision on the matter at the time.

31. Mr. Barbe stated that to simplify things from a technical point of view, part of her property abuts the actual secondary road which leads up to Dame le Roi Road. When the land was surveyed in 1984, they probably would have taken the boundary of her property as the edge of the road. Mr. Barbe stated that Mrs. Pool should have established the following information when she bought the property: how wide the road was, the kind of road (whether it was a foot path that was converted into a motorable road, etc.) While there was an established process for that, it was difficult to rectify once the survey was approved.

32. Mr. Barbe considered it important to look at legal provisions that existed then that could have accommodated her request under the law. He stated that based on the provisions they had under the law, especially the Lands Act, they cannot rectify the boundaries years after the event. Mr. Barbe noted that there was another problem which comes along with that, because it concerned the actual position of a road many years ago compared to how it is now. He queried the justification for and basis upon which a claim for compensation can be made. It is complicated to determine how the road was originally, at the time of her purchase of the land, and how it is now. Given that she had not used the procedures available to her at the time of the LRP, there was no basis now to justify making a claim for compensation.

33. With respect to Mrs. Pool's claim that her property was divided by public roads into smaller plots without her consent, which subsequently reduced their value, Mr. Barbe stated that records on file show two roads that go through her property. He did not know whether the Government had negotiated and entered into an agreement with Mrs. Pool, but stated that the land was eventually sub-divided. Mr. Barbe claimed that the land's sub-division was approved because the land is on the new land register.

This means that the owner must have at some point signed the required documentation for its sub-division to enable the Director of Survey to approve the survey.

34. In addressing Mrs. Pool's claim that the sub-division was not negotiated with her, Mr. Barbe stated that he could only guide the Commission in so far as it concerns the Land Survey Act and the process related to approval of surveys by the Directors of Survey, especially if the property in question is a private property. He claimed that one of the main advantages of transferring the property from the old system to the new one is that it was more organised in the management and disposal of properties. A permission from the Land Registrar to sub-divide the land is required before the Director of Survey can approve a survey. Such a permission from the Land Registrar is not provided without a signed "mutation" from the respective landowner that permits closing the register before opening a new register for the two sub-plots. All the aforementioned documentation is required for the sub-division of land.

35. Mr. Barbe informed the Commission that the Government is required to seek permission if they wanted to implement a local project for the community on private property. Use of private land for something bigger required negotiation with the land owner for proper permission.

2. Evidence of Mr. Jacques Pool

36. On 7 November 2019, the Commission called Jacques Pool,[5] Mrs. Marina Pool's son, having been informed that her son did extensive research into the historical context of the sub-divisions of the land and could assist the Commission in clarifying the technicalities.

37. Mr. Pool informed the Commission that on 15 December 1934, Mrs. Edoeska Grandcourt purchased a property in central Baie Lazare from Mr. Edward Bouchereau. On 30 July 1949, Mrs. Grandcourt sold two plots of land to the then colonial government on which the Baie Lazare police station, the clinic and the police barracks were built. Pending the sale, the Government commissioned one of their surveyors, Mr. Guy Savy, to legally survey the property and to place stone beacons to demarcate the boundaries. Mr. Pool provided the Commission with a copy of the survey and the land plan from Mr. Guy Savy from 1949. He pointed out that the plan detailed the dimensions of the land down to the final inch. Thus, the 24 May 1949 survey clearly demarcated the boundaries of the newly purchased Government land contrary to the claims made by Mr. Barbe. Mr. Pool noted that on one side of the Government purchased land, there was the main road going to Anse Gaulette and another leading to the Roman Catholic church, but the other three sides the land were bordered by the Grandcourt's land.

38. Mr. Pool stated that at the time of the survey, there was a public path which is now the Dame Le Roi Road. This public path fell outside the perimeters of the Government's property and was on Mrs. Grandcourt's land. Mr. Pool claimed that the leftovers of the stone beacons demarcating the boundaries of the land can still be seen on the property to date.

39. Mr. Pool informed the Commission that by virtue of two deeds dated 25 February 1965 and 15 December 1973, Mrs. Grandcourt sold a portion of her land to Mrs. Pool; the deeds outlined the boundaries of the property sold. The deed of sale stated (in French): "*Par le terrain du government*" ("by the land of the Government"), which referred to the property on which the police station stands,

[5] Hearing No. 24 of Thursday 7 November 2019.

"Et à route conduit chez monsieur Florent Payet" ("and the road which leads to Mr. Florent Payet's house"). Mr. Pool explained that while they recorded it as "la route", during that time it was really a foot path leading up to Mr. Florent Payet's home. Mr. Pool recalled that Mr. Payet then had a Land Rover but he had to park it by the roadside and walk all the way on the path to reach his home. Mr. Payet asked Mrs. Pool for permission to widen the footpath so that he could drive directly to his house. Mrs. Pool agreed as they were good neighbours, and he subsequently widened the footpath. Mr. Pool recalled that in 1978, Mr. Florent Payet supervised the construction of the Dame Le Roi Road as part of the project linking Val d' Endor to Quatre Borne.

40. Mr. Pool drew the Commission's attention to a report in the Seychelles *Nation* newspaper about this road on 19 August 1978. It stated: *"Reste Avrillé la descente vers Baie Lazare ou la route doit déboucher aux alentours de la poste de police client en sue Vale Dan Dore au ressaut routière de cette partie de iles"*. It reported on a road linking Val d' Endor to the road past the police station. Another report in the *Nation* dated 20 September 1979 stated that the Val d' Endor Road was officially opened in the afternoon of 20 September 1979 and that it was ready to serve the people. It also stated that the construction of the road was led and executed under the commendable and voluntary supervision of Mr. Florent Payet, a member of the Baie Lazare SPPF branch committee.

41. Mr. Pool claimed that during the adjudication process of 1984, prior to the land being transferred to the new land registry, the Government surveyor registered the government land as T706. The land Mrs. Pool purchased from Mrs. Grandcourt had been surveyed by Mr. Guy Savy in 1949. Mr. Pool noted that the sketch of the land survey by Mr. Savy in 1949 did not match the land registered as T706. Only the top two beacons, referred to as BCN3 and BCN2, were recognised. The rest of the original stone beacons placed by Mr. Savy in 1949 were never recognised and the boundary of T706 was changed. Mr. Pool claimed that the Government stole part of Mrs. Pool's land, on which they built roads. He stated that the Government had a new and larger outline of their property through the registration of T706. Mrs. Pool was allocated T703, the boundary of which was three or four meters away from the boundary stated in her title deed. Mr. Pool alleged that this allocation was a fait accompli.

42. Mr. Pool provided the Commission with photographs that showed the two original beacons BCN3 and BCN2. In 1981, a survey was carried out by Mr. Leong-Kee, who surveyed the entire area of the land that Mrs. Grandcourt sold to various persons. He located these beacons and demarcated Mrs. Grandcourt's land, which included the road. According to Mr. Pool, that document demonstrated that the road was built on Mrs. Pool's land. Mr. Pool claimed that Mr. Denis Barbe should be familiar with this survey because there was a problem with one of the owners of the property amongst themselves which would have been brought to his attention.

43. Mr. Pool then addressed the other two roads. He noted that there are two side roads from the main Dame Le Roi Road: a lower one and an upper one. The lower one went right through the site where his parents had intended to build their new home. Mr. Pool recalled that Dr. Ferrari told his mother: "Madam if you insist I'm going to put the road right on the veranda", which they did. They built a road all the way to the edge of the property by the river.

44. Mr. Pool recalled that in 1985, Mrs. Pool subdivided parcel T703 into T791, T792, T793, and T794. She sold T791, T792, and T793 to the people who stayed on the property at the time. Two of them were women who took care of her when she was a baby, and one woman took care of Mr. Pool, his

sister, and his brother. His mother sold the land for not much money out of gratitude for their taking care of them. Since these women had children and needed a place for themselves, his parents decided to sell them land so that they could build their family home. When Mrs. Pool sub-divided the land, she specifically requested that the road be excised from these two sales. However, the road was included in T792, contrary to Mrs. Pool's instructions. Mr. Pool suspected that this was done maliciously by the Ministry to deny Mrs. Pool's ownership of the road and to disenfranchise her in the event of a future claim. This occurred in 1985, at the height of the one-party state era. Mr. Pool noted that Mrs. Pool wanted to exclude this road from the sales in the event that she may be able to obtain redress for the appropriation of her land to build the road. Mr. Pool noted that Ms. Vitaline Luc has passed away, her daughter is still alive and can testify that the road was not supposed to be included in the land that they purchased.

45. Mr. Pool informed the Commission that on 4 June 2002, the Government sub-divided Mrs. Pool's land T1806 into T1928, T1929, T1930, and T1931. T1928 and T1930 are two roads. Mr. Pool claimed that this sub-division was done illegally by the Government as Mrs. Pool never requested this sub-division. Mr. Pool stated that the Government cannot sub-divide land without the owners' consent. The Government essentially turned Mrs. Pool's property in central Baie Lazare into parcels of lands separated by roads, subsequently impacting its value and use. Mr. Pool claimed there was a systematic strategy to disenfranchise his parents because they were not SPPF supporters and the ethos in those days were "*Ek nou, pa ek nou*".

46. Mr. Pool noted that Mr. Barbe, who previously appeared before the Commission in relation to Mrs. Pool's complaint, was supposed to investigate the issue of parcel T703. He queried why he did not take into consideration Mr. Guy Savy's survey in 1949 or Mr. Leong Kee's survey in 1981. He noted that according to the Ministry survey records SR81/131, the 1981 survey was based on the boundary beacon established in 1967, before the Dame Le Roi Road was built. These records can be found in pink boxes in the Survey Division and that Mr. Barbe would be able to find the original tin box surveys there. Mr. Pool claimed that something must be amiss as Mr. Barbe did not access these records.

47. Mr. Pool also noted Mr. Barbe's evidence with respect to the adjudication process of 1984. He noted that nobody knew when or where it was carried out. His mother was not informed and it was just a fait accompli. Mr. Pool underscored that they knew the attitude back then. Obviously, he said, they would not come and say "Madam Pool, you know you have to come and sort out your border", because they knew they were stealing her land.

48. Mr. Pool noted that Mr Barbe's comments concerning the sub-division procedures confirmed that the sub-division of T1806 was illegal. Mr. Pool reiterated the request made by Mrs. Pool that the Government recognise their original boundaries and survey the land on which the road was built. As the road currently serves a community in Dame Le Roi, they appreciated that the land on which the road exists cannot be reclaimed. However, the Government must survey the roads properly according to existing legal frameworks, and include the surveys conducted in 1949 and 1981 in their assessment. Mr. Pool added that the Government must, at a minimum, compensate his mother fairly.

3. Evidence of Ms. Vitaline Luc

49. The Commission called Ms. Vitaline Luc, who appeared before the Commission on 23 April 2021, following the evidence of Mr. Jacques Pool that she could confirm that in the sub-division and sale of the land to her mother, it was never intended that the road would form part of her land parcel T792. Before the Commission, Ms. Luc stated that her family had no recollection of their mother ever telling them that the road was not meant to form part of the land parcel sold to her mother.

50. On questioning by the Commission, Ms. Luc confirmed that the Government is currently negotiating with her family to compensate them for the road encroachment on their land parcel and that the road is also being extended. Accordingly, the position of the Luc family is that the road belongs to them and they are entitled to any compensation payable thereto.

4. Evidence of Mr. Gerard Hoareau and Other Documentary Evidence

i. General Information

51. The Commission called Mr. Gerard Hoareau, Special Advisor to the Ministry of Habitat, Infrastructure and Land Transport and he appeared before it on 11 February 2020. Mr. Hoareau advised the Commission that he spent 70% of his life employed in the Land Division. He was employed as a technician in the early 1980s and now holds a senior position in the Ministry.

52. Mr. Hoareau stated that he undertook extensive investigations into the series of assertions made by Mr. Pool that Mrs. Pool was mistreated and deprived of her land because of her political beliefs. Mr. Hoareau claimed that these allegations were unfair.

53. Mr. Hoareau advised the Commission that the Seychelles cadastre system is based on a "fixed boundary" system as opposed to the "general boundary" system widely adopted by many countries. Generally speaking, the "fixed boundary" system is very precise and very expensive to establish, manage, and maintain. The system utilises monuments to demarcate each and every corner and turning points of property boundaries.

54. Mr. Hoareau informed the Commission that a cadastre is generally a parcel-based, up-to-date land system, containing a record of interests in land including rights, restrictions etc. It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, the ownership, or control of those interests, and often the size of the parcel. Prior to 1965, Seychelles primarily adopted a deeds registry system to register amongst other things, ownership of immoveable landed property without necessarily having to physically survey the property prior to the registration of the transaction (sale or purchase) that was bound to take place or had already taken place. Mr. Hoareau noted that it was true to say that the deed system of registry still prevails today for registration of land transactions made outside the island of Mahé. The system was complemented in 1965 by the introduction of a new land registration system under the Land Registration Act, Cap 107 to register rights and interests in property.

55. The new land registration system, which dictated that parcels of land would be surveyed by modern surveying methods, was adopted in 1964. Under that system, all corners of properties are to be beaconed and surveyed pursuant to the Land Survey Act, Cap 109. The deeds system of registry with all of its limitations called for the ad hoc survey and registration of property as and when land

transactions took place. Seychelles, recognising the benefits of having the new land registration system, embarked on an exercise dubbed the LRP to systematically survey and register all rights and interests in landed properties. The exercise was implemented pursuant to the Adjudication of Title Decree of 1979, Chapter 1 of the Law of Seychelles at an estimated cost of 661,000 pounds, fully funded by the British Government. These two systems: the new land registration system and deed registration system currently run in parallel for the islands of Praslin and La Digue.

56. Mr. Hoareau stated that Mrs. Pool's land case comprises of four main events and his investigation showed that these revolved around the following:

    (1) The survey of land she purchased in 1965 from Mrs. Edoeska Grandcourt at Baie Lazare. This survey was effected in 1983 under the LRP and resulted in parcel T703.
    (2) The eventual subdivision of T703 by the survey division into parcels T791 to T794. This sub-division was carried out in 1984 by the Survey Division at Mrs. Pool's request.
    (3) The subdivision of parcel T794 into parcels T1805 and T1806. This sub-division was effected under the authority of Ms. Pool by a private survey firm called G&M Surveys Pty Ltd in 1996.
    (4) The subdivision of parcel T1806 into parcels T1928 and T1931 in 2002. This subdivision was carried out by the Survey Division with Mrs. Pool's knowledge to excise parcels occupied by existing access roads on her plot of land at Baie Lazare.

ii. Parcel T703

57. Mr. Hoareau claimed that on 23 November 1983, Mrs. Pool, then living at Baie Lazare, was served with a notice of demarcation under the LRP pursuant to Section 10 of the Adjudication of Title Decree 1979. The notice was referenced as claim 722. According to Mr. Hoareau, the act of serving this notice is confirmation that Mrs. Pool was officially informed and would have been aware, amongst other things, that the boundary of the property she purchased from Mrs. Edoeska Grandcourt and others abutting hers (notably land belonging to Mr. Low-Wah, Luc and others) were going to be demarcated on 6 and 7 December 1993.

58. In support of this claim, Mr. Hoareau produced a number of notices of demarcation documents. Notably, claim reference number 722 dated 23 November 1983, which purported to be in relation to parcel T703, is addressed to Ms. Marina Paul and references the demarcation of her land and that belonging to Mr. Low-Wah, Luc and others. There is also claim reference 689, also dated 23 November 1983, relating to parcel T705 identified as addressed to Mrs. Marguerite Morel of Foret Noire, which purported to alert them of a demarcation of a parcel of land belonging to Mrs. V Luc and Mrs. M. Pool and others. Another claim with reference number 575 addressed to Mrs. V. Luc concerning parcel T704 again purported to relate to the demarcation of land belonging to Mrs. Pool and Mrs. M. Morel.

59. Before the Commission, Mr. Hoareau stated that other landowners abutting or in the vicinity of Mrs. Pool's property were served with similar notices, referencing those identified above. Mr. Hoareau informed the Commission that it was important to note that the notices gave clear warning that demarcation of boundaries would proceed in both the absence and the presence of the landowners on whom the notices were served.

60. Mr. Hoareau informed the Commission that on 6 January 1984, Mrs. Pool applied to the Survey Division to sub-divide her land into three plots. In support of this contention, he produced a document

of her application on which her land was described. That document described her land as comprising 5 acres, adjoining the motorable road and containing 7 houses. She indicated that the purpose of the sub-division into three plots was to sell the land.

61. Mr. Hoareau informed the Commission that on 20 January 1984, Mr. F.M. Sharp, a surveyor, was appointed as a demarcation office pursuant to the Adjudication of Title Decree 1979. In the document on file entitled "Method of Survey", he recorded which beacons and curvilinear boundaries were to be surveyed for an entire declared survey "block". Mr. Hoareau advised that as part of the LRP, properties to be surveyed were broken down or grouped into contiguous cadastral "blocks" to facilitate the systematic survey of land and registration of titles on Mahé Island. The "block" for the area in question was referenced as Block TD33. For the purpose of registration in the new land register, Mrs. Pool's cadastral parcel was pre-allocated the number T703 within this block. Other parcels within Block TD33 were allocated numbers T702, T704, T705, T706, C1388, C1389, and C1390.

62. Mr. Hoareau claimed that on 30 January 1984, a survey technician under the "command" of Mr. Sharp moved onto the site to start survey measurements associated with surveys for Block TD33.

63. On 1 February 1984, the Survey Division wrote to inform Mrs. Pool that the LRP team had conducted fieldwork for her property but that the actual registration of her main property would take place after the display period of three months. This display period was the norm for all LRP surveys and is stipulated in Section 22(1) of the Adjudication of Title Decree 1979. It allowed claimants of interests in land to lodge objections to a survey, map, diagram, etc. if they considered these to be inaccurate or incomplete. In Mrs. Pool's case, this meant that the Survey Division could only proceed with the preparation of a planning application for the sub-division while waiting for the registration of her land. Mr. Hoareau claimed that the Survey Division informed Mrs. Pool that a visit to the property would need to be carried out, typically for the purpose of mapping out existing features on the land. This allowed for the preparation of the sub-division application for eventual submission to the Planning Authority.

64. In support of this claim, Mr. Hoareau produced a copy of the letter that was sent, which confirmed his evidence. Namely, the last paragraph of that letter informed that:

> [w]e have to prepare a location plan to show where the three plots are to be distracted, any access road, footpath, existing hoses and any other landmarks required by the Planning Authority. In order to do this I would need to make a site visit to your property. I would be grateful if you could wait for me at the Baie Lazare Police Station at 9.30am on Tuesday 14 February 1984 to show me the site.

65. Mr. Hoareau claimed that by 30 May 1984, the LRP Land Surveyor lodged his completed survey with the Survey Division for examinations as required by the Land Survey Act Cap 109. On 4 December 1984, the LRP Manager, who was also delegated limited powers of the Chief Surveyor, approved the survey of parcel T703 and others in Block TD33. Mr. Hoareau noted that there was no record to suggest that there were boundary objections or disputes in respect of the survey of Block TD33 found on the survey file. He claimed that this was confirmation that all the landowners, including Mrs. Pool, consented to the newly established boundary lines and beacon positions.

66. On 28 March 1985, the Planning Authority approved the sub-division of parcel T703 to extract 3 plots. The survey, however, resulted in 4 plots. The additional plot was a remainder from parcel T703. A notice was served to Mrs. Pool advising that the sub-division was approved and that the development had to be carried out in accordance with the detailed plans and particulars. Further, Mrs. Pool was informed that the existing right of way between plot 2 and plot 3 had to be well demarcated by survey and that the life tenancy for the sitting tenants in the small house upon plot 2 had to be written in the title deeds.

67. An accompanying report on Parcel T791, T792, T793, and T794 (sub-division of T703) recorded as follows:

> Instruction: Received from Mrs. Marina Pool Job No.84/9. It was required to sub-divide Parcel T703 into four plots as shown on working plan. Planning Certificate CPS/139/84.
> Demarcation: Beacons were placed as indicated by the owner and in conformity with Planning Approval.

68. On 6 May 1985, the Survey Division wrote to Mrs. Pool and informed her that the sub-division of parcel T703 would be carried out on 13 May 1985 at 9.30am and that her presence was required.

69. On 3 July 1985, the Land Registrar wrote to Mrs. Pool and served her with a notice of registration of parcel T703 in her name. According to Mr. Hoareau, this was done in accordance with the Land Registration Act of 1975. Parcel T703 was conferred a qualified title. On 9 July 1985, the Survey Division wrote to Mrs. Pool to inform her that the sub-division of parcel T703 was completed and requested that she bring along 4 stamps of SR5/- to affix to the survey plans. The sub-division resulted in parcels T791, T792, T793, and T794. On 22 April 1986, Mrs. Pool signed a standard letter of mutation prepared by the Survey Division addressed to the Land Registrar to apply for the sub-division of parcel T703 into parcels T791, T792, T793 and T794. On 24 April 1986, the Chief Surveyor approved the sub-division of the parcel.

70. On 1 April 2021, Mr. Hoareau furnished the Commission with additional documents which he claimed were only discovered after his testimony before the Commission. This tranche consists of three documents. The first document is a letter from Mrs. Marina Pool dated 24 January 1978 stating the following:

> I, Mrs. MARINA POOL of Baie Lazare, Mahe, Seychelles after discussion with Dr. J.D.M. Ferrari, Minister for Agriculture and Land Use, agree to cede to the Government of Seychelles a small part of my property situated at Baie Lazare for the proposed road to Dame Le Roi. This parcel of land is represented coloured in red on a map dated 13 January, 1978 attached to a letter from Mr. Hadley, Director Project Planning & Design Unit of 18 January, 1978 reference WHH/DV.
>
> Mrs. Pool will be paid Rs.2,000 as compensation for the loss of this property. However, the present track coloured green on the same mapwwill (sic) be closed at the cost of Government to pedestrians or any other form of traffic.

71. The second and third documents are a letter dated 13 February 1978 from the Permanent Secretary of the Ministry of Agriculture and Land Use to the Senior Lands Officer and a sketch plan showing the land in question, respectively. The letter stated the following:

> DAME LE ROI TRACK ROAD

> The Minister 'has negotiated the transfer to Government of a part of Mrs Marina Pool's land at Baie Lazare for the purpose of building a road to Dame Le Roi Road. A sketch plan showing the land in question and an agreement signed by the Minister and Mrs Pool for the transfer of this land at a cost of Rs.2,000 are attached.
> 2. I should be grateful if you would arrange to draw up the necessary deed of transfer. The Attorney-General's chambers has advised that it needs the following information:
> (1) Is Mrs Pool's land on the old or new register?
> (2) A survey plan of the area to be acquired.
> (3) Are there any easements attached to the land to be acquired?
> (4) Is the land held solely by Mrs Pool or are there co-owners?
>
> 3. The Minister would like the deed of transfer to be drawn up as soon as possible. Mrs Pool has already been paid Rs.500 on the advice of the Attorney-General. The balance of the money is available for payment at any time.

iii. Parcel T794

72. On 22 February 1994, Pardiwalla and Twomey, Attorneys-at Law & Notary Public, wrote to the Ministry of Community Development, Director of the Lands Division a letter entitled "Acquisition of Portion of T794". That letter advised as follows:

> I am writing to file a request for monetary compensation with your office on behalf of Mrs, Mariner (sic) Pool, for a portion of T794 at Baie Lazare.
> I have been informed that the purpose of the acquisition was a road. However, the road that the government constructed went right down the middle of Mrs. Pool property. To date, she has not received any compensation for the acquisition. She will accept a monetary settlement in that it would be too burdensome for the public to have to forego the road at this point and time.
> I suggest that at some point, your appraisers can make it out to Takamaka to determine the fair market value of this taking and we can then proceed to negotiate a settlement that will be acceptable to the government and Mrs. Pool.

73. On 13 June 1994, the Assistant Director of Lands for the Principal Secretary responded to the above letter and stated that the entirety of parcel T794 was registered under the name of Mrs. Marina Pool. It was advised that the Ministry was making arrangements to have the land surveyed and once that was finalised, they would be in a position to have the land valued and make an offer of compensation to Mrs. Pool.

74. Close to two years later, a survey was carried out and the Lands Office was presented with a surveyor's report and a copy of the survey plan of T794 dated April 1996, which depicted the existing roads on the property. The land surveyor observed in the reports that: "The house occupied by Mrs. Marina Pool is on the property. As per the detail survey; (i) the public road to Val d'endor, (ii) an access road and (iii) a track are running through the property".

75. On 26 April 1996, Mrs. Pool wrote to the Land Registrar informing them that she intended to sub-divide parcel T794 into parcels T1805 and T1806.

76. On 17 May 1996, the Director of Surveys approved the sub-division of parcel T794 into parcels T1805 and T1806.

77. On 3 July 1996, the Director General for Land and Surveys requested approval from his Principal Secretary to proceed with the survey to excise the road from Mrs. Pool's property. The Commission was provided with a photocopy of this request made from the notes from the file. It reads "I submit for necessary approval before I proceed with survey to excise the road".

78. In his presentation, Mr. Hoareau stated that the approval sought was to proceed with the survey to excise the road(s) on parcel T1806. He stated that the actual parcel number did not appear from the note and suggested that there was more than one road to be excised. He represented the note as indicating this by claiming it used the term "road(s)". A review of the note showed this to be incorrect. It referred only to "the road". A handwritten note on the file dated 8 July 1996, stated: "Agreed. Pls Proceed". Mr. Hoareau identified this note as being from the Principal Secretary responsible for Lands and Survey, which gave the approval to proceed with the requested survey work to excise the road. According to Mr. Hoareau, the Survey Division commenced work to "subdivide parcel T1806".

79. Mr. Hoareau informed the Commission that the request for permission to handle Mrs. Pool's land now changed to parcel T1806 instead of T794, the latter of which had been subject of a detailed survey. A survey report of T794 dated 29 April 1996 sets out the details of that survey.

80. Mr. Hoareau informed the Commission that this is confirmation that while the Survey Division was carrying out the survey of parcel T794, Mrs. Pool proceeded to instruct G&M Survey to sub-divide this parcel. In that respect, the Commission recalls, as informed by Mr. Hoareau himself, no sub-division could have taken place without the approval of the Director of Surveys, which had been obtained on 26 April 1996.

iv. Parcel T1806 and Its Sub-Divisions

81. On 10 September 1997, Mrs. Marina Pool notified the Land Registrar that she intended to sub- divide parcel T1806 into parcels T1928 and T1931.

82. On 9 November 2001, the Survey Division applied to the Planning Authority for the sub-division of Parcel T1806 to excise from the parcel a road located thereon. The application referred to three plots of land; one was identified as a road reserve of 443m2.

83. On 14 January 2002, the Planning Authority granted the Survey Division "permission for the following development proposed by you in your application CPS/302/01" of 16 November 2001 "of the land situated at Baie Lazare, Parcel T1806 (Sub-division 3 plots) in accordance with the accompanying plans subject to the following condition(s):-

> 1. The development hereby permitted shall not be begun not later than the expiration of two years beginning with the date hereof.
> 2. The development hereby permitted shall be carried out and completed in every respect in accordance with the detailed plans and particulars.
> Following are attached:
> Environmental Authorisation and conditions
> P.U.C (E) conditions.

84. According to Mr. Hoareau, the above was the planning permission to excise the road from parcel T1806. On 7 December 2001, Environmental Authorisation was granted to the Survey Division for the sub-division of 3 plots at Baie Lazare.

85. On 13 May 2002, the Survey Division substituted the planning application to sub-divide parcel T1806 to include another existing road (second road) that was on parcel T1806. The application form of 13 May 2002 identified sub-plots of T1806, two of which were road reserves of 461m2 and 187m2 respectively. On 31 May 2002, the substitute plan to proceed to sub-divide parcel T1806 and excise the two roads was approved by the Ministry of Land Use and Habitat.

86. Mr. Hoareau claimed before the Commission that whether or not the second road was a legal entity on Mrs. Pool's property "is not known but for expediency however, as it happens in many cases, Government saw it as an opportunity then, to survey and later purchase land occupied by accesses/roads on parcel T1806 and eventually turn them into public roads".

87. On 10 July 2002, the Land Registrar gave his approval to the Director of Surveys to sub-divide parcel T1806 into parcel numbers T1928 to T1931. Mr. Hoareau claimed that once this approval had been given the Director of Surveys approved the sub-division of parcel T1806 the approved plans were forwarded to the Land Registrar for registration which resulted in parcels T1928 to T1931.

88. A handwritten note on file dated 29 July 2002, which Mr. Hoareau identified as being from the Minister to his Principal Secretary states as follows:

> This case has been long outstanding. Mrs. Pool came to see me today regarding the compensation. Can we expedite. She told me that the survey is to be approved today! N.B Can you keep her informed of the progress as she expects the case to be finalized (payment) in 4-6 weeks.

89. On 30 July 2002, the Lands Office was informed by the Survey Division on the completion and approval of the survey for the sub-division of parcel T1806 and received approved copies of the survey diagrams. On 26 August 2002, the Lands Office valued parcel T1930. The valuation report included the following:

> Registered Owner: The parcel is not in the New Land Register and is therefore assumed to be in the name of Government of Seychelles. Area of the Land: This extends to 461 sq. mertes(sic) approximately. Description: This is a stretch of level, part gently sloping mixed red soils parcel of land that has already been developed into a concreted access road off the Police station in Baie-Lazare Village. Valuation: On the basis of the foregoing particulars and other relevant factors it is my considered opinion that the value of Parcel T1930 can be stated in the sum of SR42, 500.

90. The calculation was based on SR 80 per metre of SR461 sqm with a 15% disturbance fee of SR 5,532.00.

91. On 19 November 2002, the Ministry for Land Use and Habitat wrote to Mrs. Pool offering her SR 42,500 for the purchase of parcel T1930. On 20 November 2002, the same Ministry wrote another letter to Mrs. Pool advising her of the need to remove the charge on Parcel T1930 at Baie Lazare. Mrs. Pool was advised as follows:

> We need to transfer parcel T1930 to the Government without any charges. The remainder parcels T1928, T1929 and T1931 will remain in the ownership of Mrs. Marina Pool with the charges of

> R30,000, R60,000 and R80,000 to Barclays Bank PLC. Copies of T1938 to T1931 are enclosed. We would be grateful if you would do the necessary transfer to have the charges removed against T1930 to enable us to finalise the transfer documents.

92. On 16 December 2002, a handwritten note on file, the author of which Mr. Hoareau identified as a land's officer, records the land officer informing his superiors of Mrs. Pool's concern that the main Baie Lazare road was supposed to be part of her land. That note records as follows:

> This case dates back to 1994. We visited the property some months back in a bid to resolve the issues that have been delaying the resolution of this case. At issue is the compensation for the encroachment on Mrs. Marina Pool's property. Mrs. Pool is claiming that the amount of compensation offered (as per folio 25) does not reflect all the land encroached upon. There is some confusion on the issue of the encroachment surveyed. The survey diagram at folio 1/1 indicates that Mrs. Pool's property adjoins the main road and 4m track are part of Mrs. Pool's property and this is what she has been claiming, and the reason why she has not accepted the offer of compensation. A further detailed survey was recently done and indicates that the main road is not part of Mrs. Pool's property. Plan at folio 17 is relevant. My conclusion is that there has been some mistakes in either of the two, which have thus given different resulting plans (folio 1/1, 8 and 17). In view that the plans at folios 1/1 and 17 are the same, it may be possible that there were some errors in the survey that resulted in folio 8. This remains to be verified.
> I note also that we only valued parcel T1930, in respect of which the offer was made. We also have to value T1928. We should also perhaps consider making a higher offer for the two plots. I am submitting the file for your attention and further instructions, particularly on the issue of the survey.

93. According to Mr. Hoareau, on 10 February 2004, Government surveyor Mr. Antoine Ah-Kong was instructed to visit the site and investigate the Baie Lazare Road allegation. On 13 February 2004, Mr. Ah-Kong reported by memo on his site visit at Baie Lazare as follows:

> The joint visit was effected by myself and Mr. Gordon Marie Jeanne as requested at minute 35 from the land file. The boundary beacons and the demarcated curvilinear boundary of parcels T1929, T1930 and T1931 along Dame Le Roi road were shown to the applicants. We were informed by the latter that their original boundary is along curvilinear boundary of parcels T1275 and T2047 as highlighted in yellow on the attached detail plan and that means that part of the existing public road is their property. The applicants also inform us that if they are being compensated for their property that was taken up by Dame Le Roi public road they will accept the new demarcated boundary line.

94. Notably, Mr. Ah-Kong did not appear to question that the Dame Le Roi public road in fact encroached on the property of Mrs. Pool.

95. According to Mr. Hoareau, the above report of 13 February 2004 "strongly suggests that should Government be willing to pay compensation all the associated road and land issues/problems would simply vanish".

96. On 10 May 2004, the Lands Office valued parcel T1928, a 142 square metre plot for the second road, for a value of SR 13,000 and T 1930 for SR 42,400. The two parcels totalled up to 603 square metres; the total offered was SR 55,400.00.

97. On 21 May 2004, the Ministry of Land Use and Habitat wrote to Mrs. Marina Pool and offered her SR 55,400.00 for parcels T1928 and T1930, and requested her to return a signed copy of her acceptance of the offer within the next 14 days from the date of the letter. Documents provided by Mr. Hoareau did not indicate Mrs. Pool's response to this offer.

98. On 23 November 2004, the Ministry of Land Use and Habitat again wrote to Mrs. Pool regarding the offer for parcels T1928 and T1930. The offer of SR 55,400 was repeated and she was again asked to return a signed copy of her acceptance of the offer within the next 14 days from the date of the letter. There was no indication on file of Mrs. Pool having responded to this letter. It was followed by another letter dated 14 April 2005 making the same offer on the same terms; it appears that Mrs. Pool made no response. On 16 May 2006, Mrs. Pool was sent a reminder to respond to the letters dated 23 November 2004 and 14 April 2005.

99. On 23 May 2006, Mrs. Pool wrote to the Director General of the Ministry of Lands Use and Habitat regarding the offer and stated as follows:

> I have done so in the past and I will repeat again that I DO NOT AGREE with the terms of the offer for compensation as it stands.
> The amount proposed is a mere pittance compared to what the true value of the land actually is. My land was a prime portion in the central (commercial) part of Baie Lazare which has been reduced to several less worthy "islands" after having been maliciously carved up for roads.
> To date not even the major portion of my land acquired has been considered for compensation. Furthermore, there are other unpleasant social nuisances that have arisen out of the construction of these roads on my property.
> I hereby invite you to come visit my land so that we can discuss my grievances on site and you would see for yourself the issues as they really are.

100. Mr. Hoareau produced no documents to evidence a response to Mrs. Pool or any discussions from the land file concerning the claims she made. The next document produced was a document dated 8 January 2007, in which the Ministry made a revised offer to Mrs. Pool of SR 63,250 for parcels T1928 and T1930. It also reminded her of the need to remove the charges. She was again asked to signify her acceptance by returning a signed copy of the offer within 14 days from the date of the letter. On 19 February 2007, another letter was sent to Mrs. Pool reminding her of the outstanding offer.

101. On 6 March 2007 a memo on file recorded a meeting between the Principal Secretary with Mrs. Marina Pool with respect to the property at Baie Lazare. That memo reported that Mrs. Pool had queried the status of the compensation and informed the Principal Secretary as follows:

> G.O.S has built on her property while constructing a road access to serve the inhabitants of Baie Lazare. According to her the road constructed is not an encroachment as believed by G.O.S but had been built entirely on her land.
> She has not accepted the offer of compensation which the Ministry had proposed to her. She said the main portion of her land has not been considered for compensation and to date the matter is still outstanding.
> NOTE
> PS has advised her to reply to our letter of offer and suggest how much exactly she wants as compensation.

102. On Monday 12 March 2007, Mrs. Pool wrote to Mr. Patrick Lablache, Principal Secretary of the Ministry of Land Use and Habitat the following:

> I write following my appointment with you on Tuesday 6 March 2007. As you will remember it concerns the carving up of my land in central Baie Lazare by the government to build three roads on it.

To put you in the picture, I will explain how things happened from the beginning. If you refer to GIS photo No. 1 you will see how the land was when it belonged to my stepmother, Mrs. Edoessca Grandcourt. Before her death. She subdivided the land into two portions. Portion A went to his (sic) only natural son, Charlemagne Grandcourt, portion B went to myself, Portion C had already been sold to the government to build the police station and staff quarters. Before Charlemagne's death, he subdivided up his land and sold all of his inheritance. Therefore only my portion of the original property was left intact.

It was around the year 1978 when the government proceeded to build, despite my strong protests, three roads onto my land. At the time it was Dr. Maxime Ferrari who was minister for land use. I still painfully remember the day he bluntly told me in my face that he would pass the road right under the verandah of my proposed new house, which was about to be built. At that time, I was still living in a wooden house where my present house now stands (marked A). Where there is a main road now, there used to be a footpath which passed right next to my old house. It was due to the nuisances from that footpath that I went to great lengths to develop a site (marked Y, which cost me a great deal as it was done by hand in those days in order for me to build a new house away from the disturbances. Ironically, now this path has been turned into a main road, I've been forced to build my new house on the same spot as the old one which I wanted to escape from, and now I live my life in a total lack of privacy. Furthermore the nuisances from the main road has increased to the point where my life is like a living hell.

To date, I have only been offered a measly sum for two small portions taken (please refer to letter of offer Ref:LAU/A/859).

The main road leading to Dame Le Roi, which was built entirely on my land, has not even been considered, as well as another section of road which falls on parcels T2049 and T2050 (which I sold at reduced prices to Mrs. Grandcourt's old nanny, Mrs. Vitaline Luc, out of gratitude for the services she rendered my stepmother). It is to be noted that the now road falls onto the two parcels mentioned but is purely a cartographic error. Mrs. Luc (she is still living) can testify that I did not sell her the road. I checked with G&M Surveys (they performed the subdivision) some years back when the error was discovered, and they wanted to charge me over seven thousand rupees at the time to have the error rectified.

Mr. Lablache, I am pleading with you to understand my dilemma and please intercede on my behalf, as I have been sent back and forth between various departments over all these years in search of justice. My husband and I are now pensioners and getting on in age, therefore I would like to see an end to this bitter experience and get on with the rest of our remaining years in this life with still some peace of mind.

I am therefore proposing that the sum of five hundred thousand Seychelles rupees (Rs 500,000) would be a just sum as far compensation for this most unpleasant situation mainly for the following reasons:
-My land which lies in the prime heart of central Baie Lazare has been carved up into small "islands", and large tracts have been rendered useless by the indiscriminate construction of the roads, and thus has lost much of its original value.
-I spent a large sum of money to prepare a proper site for my house only for it to be rendered useless by malicious construction of a road right through it.
-The roads have become a nuisance as we now practically live by the roadside and have lost all sense of privacy, and we also often do fall victim of its social ills.
-We have suffered a lot of anguish and moral torment over this whole unpleasant episode.
I pray that you will be able to help in the matter and bring some justice to this most unpleasant situation. I thus look forward to receiving a positive reply from your good office.

103. On 22 March 2007, a Lands Officer compiled a report relating to Mrs. Pool's claims which reads as follows:

Purpose:

Government has made a revised offer of R63, 250/- [...] to Mrs. Marina Pool for the purchase of parcels T1928 (extent of 142 sqm) & T 1930 (extent of 461 sqm) at Baie Lazare which are being used as access roads after she declined the offer of R55, 400 [...]

Mrs. Pool is still contesting the offer and she has made a counter offer of R 500,000 [...] for parcels T1928 and T1930. [...]

She claims the followings (sic):

The road access going to Dame Le Roi which is considered as a Public Road forms part of her property i.e. A to B at folio (51/2).

Apart from the portions of land surveyed as Parcels T1928 and T1930 she is requesting compensation for the portion of un-surveyed access road D to E at folio (51/2)

Findings:

Mrs. Marina Pool used to own parcel T703 which she subdivided into parcels T791, T792, T793 & T794. [...]

She then sold parcels T791, T792 & T793 keeping parcel T794.

Her property T794 has now been subdivided into parcels T1928, T1929, T1930 &T 1931.

Parcel T1928 (extent of 142 sqm) and T 1930 (extent of 461 sqm) are access roads while T1929 (extent of 2063 sqm) and T 1931 (extent of 3691 sqm) are her residential plots.

It is good to note from the subdivision layout at folio (53) that though the access road was not surveyed at that time, the same was there in the 1980's and the inhabitants were using it as a footpath access.

The former Local Government Department through the Baie Lazare District Authority surfaced the portion of land to 'A' to 'E" at folio (65) with concrete which is to-date serving the Baie Lazare community especially the inhabitants of this region as it is the main access road for them.

Analysis:

Mrs. Marina Pool claims that road access A to B at folio (51/2) belongs to her which is not true as the survey plan for parcel T703 (the latter she owned before subdivision) clearly shows the road access falls outside the property parcel T703 as per folio (55). There is only a slight encroachment which is shaded in yellow at folio (29/5).

She believes that the whole of the access road parcel C to E at folio (51/2) also belongs to her but that is partly true. The portion from C to D forms part of her property and the same has been surveyed as parcel T1930 but the other portion which is un-surveyed i.e. D to E forms part of parcel T2049 & T2050 which belongs to Mrs. Lamberta Luc & Mrs. Vataline Luc respectively. Folios (62) & (63) are relevant.

Ms. Marina Pool is claiming that the road access should not have been built on her property by Government forgetting that she sold parcel T791 to Mr. & Mrs. Marc Boniface with no legal right of access and their only access is through the access road surveyed as parcel T1930 (which is still her property) Folios (1/1), (53), (57) & 66 are relevant.

> Though we have surveyed parcel T1928 (see folio 34/1) as an access road and the Government has made an offer for its purchase [...], Mrs. Marina Pool owes it to parcel T792 which she sold to Mrs. Vataline Luc and the latter then subdivided into parcels T2049 and T2050. Government has concreted only parcel T1930 and not T1928. However, given that the inhabitants are also using this access road parcel T1928 to reach their property, this, to purchase the same will help the community.
>
> Recommendations:
>
> 1. The Government should maintain its offer of R63, 250/- for the purchase of parcels T1928 and T1930 from Mrs. Marina Pool.
>
> 2. We should also do the necessary to purchase the portions of private properties from B to D which being used as a public road and the same has been constructed by the former local Government Department.

104. On 15 May 2007, the Ministry of Land Use and Habitat wrote to Mrs. Pool and informed her that the Government was making a revised offer for the purchase of parcels T1928 and T1930 amounting to SR75, 000. She was again requested to indicate her acceptance by return of a signed copy of the offer within 14 days from the date of the letter. There was no indication in that letter of any of the findings of the 22 March 2007 report. On 21 June 2007, Mrs. Pool was reminded to respond to the offer made in the letter of 15 May 2007.

105. On 20 July 2017, Mrs. Pool responded to the letter of 21 June 2007 as follows:

> It is with dismay that I find your offer plain ridiculous, even offending, that you have chosen to ignore the points mentioned in the letter I wrote after my appointment with Mr. Patrick Lablache. Would therefore be most grateful if you could have courtesy to come on site, and see the situation for yourself before making such an absurd offer, while completely ignoring the other issues concerned.
> I therefore categorically refuse your offer as I would prefer a mutually accepted offer, taking into consideration all the other issues involved.
> I look forward to a prompt response from you, before I consider my other options available.

106. On 31 July 2008, a Lands Officer compiles a summary of the case reporting as follows:

> Site visit was effected on the 24th July 2008. Mrs. Marina Pool together with her 2 sons were present on site.
>
> Main Issues
>
> a. Dame Le Roi Road
>
> b. A section of road built on parcels T2049 and T2050 (Unsurveyed)
>
> c. Section of road surveyed as parcel T1930
>
> Analysis
>
> a. It has been clearly established by the survey that Dame Le Roi road does not form part of the Mrs. Marina Pool's property as claimed. Survey diagram at folio (1/1) and the deed at folio (6) refer. I explained to them this using the plan and the working plan but they insisted that the road was on their property. They told me that they will come back to me with details to proof (sic) their case.
>
> b. A section of road built of parcels T2049 and T2050 (Unsurveyed)

Marina Pool sold parcel T792 which was later subdivided into parcels T2049 and T2050 now belonging to Ms. Lamberta Luc and Vataline Luc respectively. This section of the road is not surveyed. According to the Pool's they only sold the house plots and not the portion where the road was located. Therefore, according to them this plot is still theirs. As per survey diagram at folios (58) & (59) the road is legally on the plot belonging to Ms. Lamberta Luc & Vataline Luc and should the Government wish to purchase this section of the road then it would be the Luc and not the Pool's.

c. Section of road surveyed as parcel T1930 was built in late 1970's and there existed a footpath access at that time. The plot legally belongs to Marina Pool and she should (sic) paid compensation for this road. This road is the one servinf(sic) Ex-hunt land bank project.

d. Parcel T1928 this is a little section of the road serving parcel T2049 which was sold by Marina Pool. The Pool's have no objection to this road and Government can consider to purchase it as to remain public road.

Conclusions

Marina Pool's Property enjoys frontage to the Dame Le Roi road, although she claims that the road has encroached on her property, survey documents indicate otherwise. During the site visit the Pool's indicated that they will provide additional information to prove that the road is built on their property and they will sort out the ownership of the section of the road on parcels T2049 & T2050 and they will only agree to negotiate further when all their grievances are addressed.

Parcel T1921 which the Pool's claimed to have lost value because of the road construction, I personally believe this conversely not true because the property has frontage of 2 roads and can be used for commercial purposes which is a higher use.

The proposed compensation of SR 75,000 appears to me to be reasonable and should be maintained.

107. A record on file by the Lands Officer who prepared the above report dated 14 April 2009 recorded a meeting with Mr. Jacques Pool on 29 March 2009. It stated that Mr. Pool informed him that they still believed that the main Dame le Roi Road was built on their property and that the road leading to the Ex-hunt land bank project was maliciously constructed on their property by the Government. They have suffered a lot and continue to suffer, and they were only willing to negotiate further after all their grievances are addressed. The Lands Officer advised Mr. Jacques Pool that based on the information they had, the Dame Le Roi Road was not built on their land; only two sections of road which have been surveyed as T1930 and T1928, which Government can purchase from them. The Pools have no claim to the 2 sections of road built on parcels T2049 and T2050 because they already sold them to Lamberta Luc and Vitaline Luc respectively. It was then agreed that the Pools would provide more details regarding their claim for further consideration, including the amount of compensation they sought to claim from the Government.

108. A document on file entitled "Interview Report Form, PPO Case" dated 21 October 2009 recorded a meeting with Mr. and Mrs. Pool and their son Mr. Jacques Pool with the Principal Secretary for National Development ("PSND"). According to Mr. Hoareau, the meeting took place following a query from the President's Office. It reported as follows:

Mr. Robert Pool was attended by PSND on 15th October 2009 regarding compensation for his pig breeding farm at Baie Lazare. Mr. Pool was accompanied by his wife Marina and son Jacques.

Mr. Pool and family was (sic) running a pig breeding farm on his property at Baie Lazare and was stopped due to public and environmental health reasons whereby his license was not renewed by the Licensing Authority.

Mr Pool's son informed PSND that their license was cancelled for political reasons and it happened during the political campaign. He added that they were informed that the farm is causing bad smell in the area and given the fact that the area is residential their license cannot be renewed. He assessed that this was never the case as the farm was kept clean at all time and that the action was purely malicious.

Mrs. Pool stated that they were now operating a crop farming on a small scale and that most of the time thieves are stealing most of the vegetables and that if they received a compensation from GOS they are planning to fence the area.

The family also spoke about compensation for part of their property at Baie Lazare that was acquired by the Government in the public interest for construction of motorable access road. They stated that since they had not received any compensation despite various requests they made.

Advice Taken/Advice Given
PSND informed the parties that after they requested for compensation the Ministry did not consider their request given the fact that they were operating their business on a private land. However, the President has requested that the Ministry reconsiders the decision made.

PSND informed them that their case had been discussed with the Minister and he had agreed that they are offered a one-off payment on humanitarian ground. The offer of R100,000 was conveyed to them and the offer letter was also hand delivered to Mr. Pool.

However the family felt that the amount will not be enough to fence the whole area as they wished therefore; PSND advised them to think over the offer and if they disagree with the proposal to submit their counter offer back to the Ministry stating all their concerns.

Regarding the claim for compensation PSND informed them that he will go through the file and if necessary he will meet again with them for further discussion.

A site visit will also be conducted by PSND.

The Pool family expressed their appreciation towards the Ministry for having considered their request and they stated that it is a step forward to resolve the long outstanding issue. They added that they will revert back to us regarding the offer.

109. An undated letter from Mr. Denis Barbe, Director of Surveys, to Mr. Robert Pool entitled "re: Extent and Boundary of Property T1929 and T1931 situated at Baie Lazare" referred to extensive research carried out in both the land and survey file following the Ministers visit in 2011. It advised as follows:

Our records show that T1929 and T1931 is the remainder of the property belonging to Mrs. M. Pool after subsequent subdivision throughout the years. The original property was surveyed as per title deed transcribed in Volume 56 Number 95 in 1984 as part of the Land Registration Project. The extent and boundary of the property was defined by the approved survey diagram, T703. The diagram showed the edge of Val Den Dor road as the eastern boundary of the property. Further, search in the title deed describes this boundary as abutting to the government land and the road leading to Mr. Payet's property, C5084.

The Land Registration Project (LRP) was carried out with the purpose of transferring land from the old register onto the new. In doing so, land had to be adjudicated and surveyed. The LRP made provisions for any objection by interested parties or land owners who felt that their land had been wrongly surveyed, to be lodged and addressed at the time of the project. Therefore, any error in respect to the extent and boundary of the property should have been addressed at the time of the project and within framework provided for at that time.

> In light of the above, our Ministry can only rely on approved survey diagrams to verify your claim. The current approved (T1929 & T1931) and cancelled (T703) diagrams denotes the boundary as up to the Val Den Dor road as surveyed in 1984. As a result our research could not substantiate your claim. To that end, regretfully, we will be closing the case on the above subject matter.

110. Handwritten notes dated 15 May 2011 in the land file indicated an agreement to investigate the issue of ownership and extent of the boundary. Another note dated 20 December 2011, according to Mr Hoareau from the Director of Surveys to the Principal Secretary to Patrick Lablache states:

> My apologies for the delay in conveying my findings. The issue of road and boundary was initially raised with us per min 40 and a conclusion on the same was reached back then. In my view the land owners are trying to raise the issue again afresh despite work done on the same in the past. Nevertheless I have carried out a small research to confirm the conclusion at min. 40. To this end I agree with the findings as per min 40. I don't think there are other possible reasons to doubt the same. On that basis I think we should not pursue with this. However, there might be small encroachments of the road on the property given that the boundary is a curvilinear arc and that with the road works affects the same.

111. The min 40 referred to by Mr. Lablache recorded as follows:

> We have traced the history of parcel T1806 right back to the ancestor parcel T703. The public road has always plotted outside the subject properties. Detail survey plotting @ 8 is wrong. The same has been re-plotted @ 29/5 and the public road plots outside the parcel(s). Except for the same road encroachments, applicants here have no legal basis for claiming compensation regarding the whole extent(s) of the public road abutting their property.

112. A handwritten note on file dated 27 July 2012 is, according to Mr. Hoareau, an instruction from the Principal Secretary to the Director of Surveys to communicate the findings to Mrs. Pool and to request that she seeks the assistance of a private surveyor to prove otherwise.

113. A note on file dated 7 July 2012, recorded the President requesting the Minister of Land Use and Habitat to discuss the case with him. Another note dated 15 September 2016 recorded the Minister of Land Use and Habitat having discussed the case with the President and requesting that the file be put away. On 24 November 2016, the file was put away.

114. Mr. Hoareau claimed that it may have been a possibility that the survey conducted in 1949 by Mr. Savy was not available to the LRP team when they undertook their survey in 1983 and 1984. He queried why Mrs. Pool did not bring it to their attention and stated that "[c]oncerned parties were all served with notices and associated announcements were also made on public media. These are evidences that they were all aware of what was going in in 1983".

115. Mr. Hoareau also informed the Commission that while Mr. Jacques Pool claimed that he obtained the 1949 survey documents from Survey Division from a Tin Box drawing he could not trace this plan as having been registered as a Tin Box plan in 1949 or beyond. He also noted that Tin Box plans are usually numbered and that Mr. Pool's plan contained no such number. He stated that the reasons for not registering the plan are unknown to him.

v. Additional Information Provided by Mr. Gerard Hoareau

116. Mr. Hoareau further informed the Commission that for the purposes of investigations, an in-house cartographer in the Survey Division was instructed to attempt matching the 1948 and the 1984 surveys on T706 (T706 being that part of the land sold by Grandcourts to the Government for the construction of the Baie Lazare Police Station and the Ministry of Health's clinic) and provided the Commission with the results. As he explained, the match on the side of Mrs. Marina Pool's property (north-west) shows that the Dame Le Roi Road plots between Mrs. Marina Pool's property and that of the State. Towards the southeast, on the side of Charlemagne Grandcourt's property (T708), a land extension on part of the Government of Seychelles' property (T706) was noted. Mr. Hoareau stated that no documentation to explain this extension could be found in the relevant files. He added that there was no record to suggest that the property owner objected to this part of the boundary at the time of the survey and it was approved in 1984. He noted that area computations for the figures of 1949 and 1983 indicate a difference of about 800 square metres. He queried whether the 1949 survey was accurate as he could find no record that they were cross-checked for mistakes.

117. Mr. Hoareau stated that his personal view was that the extension may have been consistent with provision 14(b) of the Adjudication of Title Decree 1979. This section gives the Demarcation Officer special powers to "re-allot boundaries of any land to ensure the more beneficial occupation thereof...". He stated that the Government public institutions (police and health authorities) most likely occupied this land in 1983.

118. With respect to plot T703, Mr. Hoareau found it important to note that the objective of the LRP was to preserve interests in land. He claimed that provisions of the Adjudication of Title Decree Act 1979 "somewhat places the onus on landowner(s) to make available documents in their possession to the LRP team". Mr. Hoareau queried whether a landowner who had not acted pursuant to the Adjudication of Title Decree should "appear today in 2019 to accuse public officers and the Government as thieves for stealing their private property on presumption of a wrong survey or no knowledge of the survey?".

119. Mr. Hoareau emphasised that the provisions of the Adjudication of Title Decree 1979 provided all landowners with a second opportunity to object to a survey under the LRP process. This was the mandatory display period of 3 months for landowners to claim their land and/or lodge objections to a survey carried out by LRP, during which Mrs. Pool could have raised her objections. He claimed that "there is all evidence to suggest that Mrs. Marina Pool knew of the display period given she was even informed of this by another Land Surveyor who had nothing to do with the LRP. This was in January 1984 when she was going through the process of subdividing her parcel T703". It was Mr. Hoareau's view that "Mrs. Marina Pool consciously or unconsciously chose to relinquish the rights (she is now trying to claim) when she failed to claim or to object to the survey undertaken, pursuant to the provisions of the Adjudication of Title Decree for the property at Baie Lazare". He stated: "it goes without saying that, if we believe in Laws of the land then we should respect them and above all, adhere to them".

120. Mr. Hoareau added that Mrs. Pool could have lodged her grievance with the Supreme Court if she was unhappy with the appeals process, though no record suggests that she did. In his view, in the absence of objections from affected landowners at the time, the Adjudication Officer invoked, rightly so, Section 25(b) of the Adjudication of Title Decree 1979. He stated: "This means that the survey carried out for Block TD33 is final".

121. Mr. Hoareau informed the Commission that it is safe to conclude that survey of properties effected under the Adjudication of Title Decree 1979 by the LRP team were carried out in tandem with pertinent provisions of both the Land Survey Act Cap 109 and Land Registration Act Cap 107. Subsection (4) of Section 21(2) of Part V of the Land Survey Act is clear with regard to the finality of property boundaries and beacons duly established under these Acts. This Section states that "the beacons and boundaries shown on plan filed under subsection 6 of Section 15 of the Land Registration Act shall be deemed to have been lawfully established after 10 years have elapsed from the first registration under the provisions of the said Act of the parcel of land to which the plan relates..." The survey of Mrs. Pool's land was approved by the Director of Surveys on 4 December 1984. The notice of first registration was issued to Mrs. Pool on 3 July 1985 and the first time Mrs. Pool made known that she had issues with the boundaries was on 16 December 2003, 19 years and six months after the first registration notice was issued. According to Mr. Hoareau, Mrs. Pool was time barred. Mr. Hoareau noted subsection (5) of Section 21(2) which states: "The period of 10 years mentioned in the subsections shall not be suspended by any event or any cause whatsoever and shall run against all persons without exception notwithstanding anything in any enactment to the contrary". Mr. Hoareau queried whether it is warranted to break the law to satisfy an indirect request to amend the lawfully established boundaries of parcel T703.

122. With reference to the road being built on Mrs. Pool's land under the command of Mr. Florent Payet in 1978 and/or 1989, Mr. Hoareau referred to the articles in the Nation, which were also referenced by Mr. Jacques Pool. It was reported that the road in question was constructed to serve the farming community and other landowners in Baie Lazare. The road was constructed mostly by residents of Baie Lazare on a voluntary basis. He queried why Mrs. Pool did not object to the road being built on her land at that time if she was opposed to it.

123. Mr. Hoareau further informed the Commission that it was not recommended practice for public roads (duly proclaimed or not) to be included within figures on survey diagrams. He noted that while some roads were included in old plans, they were generally left out of survey diagrams by land surveyors. Turning to Mrs. Pool's claim that part of the main Baie Lazare public road fell within her property's boundary, Mr. Hoareau claimed that there was "no concrete evidence to confirm this to be so". Mr. Hoareau claimed that it was a known fact that the main Baie Lazare Road is a proclaimed entity and has been part of the public domain for some time. There are no records to show how the road was proclaimed but he stated that "there is all the reason to believe that road proclamation must have gone through an established process and implementation, and those whose properties were affected by the exercise must have been duly compensated or dealt with then". He added that it was likely that most of the land on which these public roads were located was given away freely by the owners. He queried: "[s]hould this be the case, does Mrs. Marina Pool and his (sic) son have the right today to claim compensation for land over which is located a main road that many and they themselves also use to get to their residence(s)?"

124. With respect to the Pools' claims that the parcel of the sub-division of T703 was a fait accompli, Mr. Hoareau advised the Commission that he studied the description of the land Mrs. Marina Pool purchased from Mrs. Edoeska Grandcourt in 1965 as found in Land Registry Transcription Volume 48. No 282 registered in 1965. The English translation described the property as follows: "on a side, by the public road; a second side by the lands of Government and the road leading to Mr. Florent Payet, a third side, by Vitaline Legaie and Mrs. Francois Morel and the fourth and last side, by Balusamy Naidoo, Mrs. Joseph Albert and Mr. Harold Hunt". Mr. Hoareau submitted that the description was

not without ambiguity. He stated that the phrase "a second side by the lands of the Government and the road leading to Mr. Florent Payet" was subject to two interpretations: a) that part of or the entire existing private road/ public footpath as described in 1949 and 1965 on the side of the Grandcourt's property fell within the portion of land purchased by Mrs. Pool in 1965, which would fully support the Pools' claim; or b) the notary was simply trying to identify as far as practicable which side of the property he was referring to in the Deed of Sale and found the best way to do so was to make reference to the lands already purchased by the Colonial Government, including the existing road.

125. Mr. Hoareau advised the Commission that "based on sound judgement and personal experience in this sort of matter", it was difficult to understand why Mrs. Edoeska Grandcourt would want to sell a private road/public path to Mrs. Marina Pool. He claimed that Mrs. Grandcourt would likely have preferred to sell it to the Colonial Government, who had public funds to maintain it. On this basis, he was not convinced that the private road/public path formed part of the sale to Mrs. Pool.

126. Mr. Hoareau also provided his analysis of the deed of sale with Mr. Guy Savy's survey regarding the Government land. This was described as "A portion of land situated at Mahe, place called Baie Lazare, bounded as follows as set forth in the attached plan [...]; on the second side by the avenue leading to the Roman Catholic Church on the line running blah, blah..." However, in the deed of sale, the parcel description did not state that the land is bounded "by the avenue leading to...". Mr. Hoareau claimed that his examination of the survey led him to conclude that the road plots fell outside the boundary of the land purchased by Government. He claimed that this was relevant in assessing the veracity of Mrs. Pool's claim that the road was part of her property. He queried: "if the avenue/road was kept outside the parcel sold to the Government in 1949 why would not the same approach have been taken in the 1965 transaction?" He therefore asserted that "The public road [...] was never part of Mrs. Pool's property". Mr. Hoareau purported to identify further discrepancies in the description of land sold to the Government in the deed and Mr. Savy's survey. For example, the written description stated that the land was bounded on "the second side by the public road on 26 feet". However, this is portrayed as 28 feet on the plan. Mr. Hoareau stated that the 1949 survey plan was not entirely accurate.

127. With respect to the two roads built on parcel T794, Mr. Hoareau stated that he did not find any records to show that the Ministry was responsible for building these roads and that it could have been part of the voluntary work conducted in 1978/1979. When parcel T703 was surveyed in 1984, long after the roads were constructed, it was clear that no access road was inserted on the survey diagram but newspaper reports confirmed it was there in 1979.

128. Mr. Hoareau stated that the LRP project did not concern mapping roads on properties, but instead served to survey properties for the purpose of registration. He claimed that this was the reason the road was not plotted on parcel T703 in 1984, as is the case with many LRP surveys. With respect to the Dame Le Roi Road, Mr. Hoareau noted that the survey of Block TD33 was implemented only in the 1980s when the road was already built. Given that the deeds referenced "by the road", the existing edges of road were probably adopted as part of the boundaries for the respective parcels surveyed.

129. Mr. Hoareau had no grievances with respect to the survey effected by land surveyor Mr. John Leong-Kee in 1981 or with the references to beacons BCN2 and BCN3 in his report. However, he was of the view that Mr. Jacques Pool's claim that part of the Dame Le Roi Road was located on his Mrs. Pool's land was inaccurate. The 1981 survey for Mr. Florent Payet and Charlemagne took place well before the LRP survey commenced. Mr. Hoareau did not find any link between Mr. Leong-Kee's survey and

Mrs. Marina Pool's property as he found that the two properties do not and never abutted each other at any point, not even with a beacon marked as "hole" (a hole in a rock). Mr. Hoareau stated that Mr. Jacques Pool seemed to claim that Mrs. Pool's property extended to that hole abutting part of parcel T235. Mr. Hoareau stated that his argument may not hold water as Mr. Leong-Kee never described the north-western part of parcel T235 to be Ms. Marina Pool's but he did so as an access Road from the main Road (possible Baie Lazare Road) to Dame Le Roi.

130. Mr. Hoareau disputed Mr. Jacques Pool's evidence that BCN2 and BCN3 are located on the western boundary of the police station boundary and asserted that these two beacons are located to north-east of the police station. While Mr. Leong-Kee's report of 31 March 1981 did not mention that the old beacons on site were named BCN2 and BCN3, he did report that some old beacons were found. Mr. Hoareau stated that Mr. Leong-Kee may have seen other old beacons instead of those as alleged by Mr. Jacques Pool.

131. To conclude, Mr. Hoareau informed the Commission that it was important to highlight to any lay person that one should not compare orthophotos with approved cadastral plans in land surveyance. Cadastral diagrams are precise maps, he said, whilst orthophotos are generalised pictorial documents that show existing physical features at the time it was made. He stated that orthophotos produced by Mr. Jacques Pool and the Ministry should be viewed with caution.

5. Case filed before the Ombudsman

132. The land file evidenced that Mrs. Pool had filed her complaint before the Ombudsman prior to coming to the Commission.

133. On 6 May 2019, the Ombudsman wrote to the Ministry of Land Use and Habitat to inform them that they were in receipt of a complaint against the Ministry by Ms. Pool, "who is aggrieved by the decision of your Ministry to encroach, sub-divide and construct three access roads on her property at Baie Lazare". The Ombudsman's communication provided in relevant part as follows:

> Mrs. Pool, a landowner at Baie Lazare, complains that the government had:
> (a) Encroached on her land on several occasions
> (b) Unlawfully and without her express permission sub-divided her property into smaller plots
> (c) Illegally constructed access roads on her property which have impacted the value of her properties and resulted in inconveniences to her.
>
> The complainant contents that there was no mediation held with her at that time and her consent was never sought.

134. The Ombudsman requested access to the file from the Ministry, which Mr. Hoareau informed the Commission was provided. On 29 March 2020, the Commission sought access from the Ombudsman of any relevant materials she may have concerning the case of Mrs. Pool. The Ombudsman informed the Commission shortly thereafter that she had been granted access to the land file, of which the Commission already had possession, and nothing further had been forthcoming from the Ministry.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

135. 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]

136. 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]

137. 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 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.

138. 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

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[6] TRNUC Act, Act 9 of 2018 (14 September), sections 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] TRNUC Act, sec. 7(b).
[10] *Id.*, sec. 6(8)(c).
[11] *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).

of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

139. The Commission notes that while an 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.

140. 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.

141. 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.

142. 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

143. 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.

144. 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.

145. 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.

146. 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. Unlawful Acquisition of Property - Dame le Roi Road

147. The Commission notes that the first claim by Mrs. Pool concerns the Government's alleged acquisition of the Dame le Roi Road without compensation during the LRP process. As a result, the Commission finds that Mrs. Pool suffered the violation of unjustified acquisition or loss of property or business under Section 2(8)(h) of the TRNUC Act.[12]

148. Regarding its required admissibility nexus to the Coup d'état of 1977, the Commission recalls that Dame le Roi Road was widened by the Government during 1978,[13] and the LRP of Baie Lazare occurred in 1984, both of which were during the time of the one-party State and thus during the primary temporal mandate of the Commission. Further, the Commission recalls that land acquisitions were often done based on perceived political allegiances and used in a discriminatory manner against those perceived to oppose the Government which took power with the 1977 Coup d'état.[14] In these circumstances, the Commission is satisfied Mrs. Pool's property rights were impacted in furtherance of policies implemented by the administration that gained power through the Coup d'état. As such, the Commission considers its thematic mandate to also be met.

149. The Commission considers that the violation of unjustified acquisition or loss of property under Section 2(8)(h) broadly entails 1) the unlawful or arbitrary taking or appropriation 2) of the physical, real, financial, intellectual, or other property or business of one or more persons 3) that results in the deprivation or interference of use of the property or business by that person 4) without adequate, prompt, and effective compensation, 5) by a perpetrator.

150. Firstly, the Commission considers whether there was a taking which was unlawful or arbitrary. In that regard, the Commission recalls the conflicting evidence it has received as to who owned the land on which the road was constructed. The Commission recalls that the basis of Mrs. Pool's claim was pursuant to the 1949 survey completed by Mr. Savy. Mrs. Pool claimed that her property abutted the property of the Government; however, there had initially been a footpath there. She had later allowed

[12] TRNUC Act, sec. 2(8)(h).
[13] The Commission further recalls that the construction of the road was led and executed by Mr. Florent Payet, a member of the Baie Lazare SPPF branch committee.
[14] Final Report, Chapter XX Land Acquisitions

her neighbour, Mr. Florent Payet, to widen the footpath to allow him to get his Land Rover up to his property. Later, in 1978, the Government further widened the footpath that Mr. Payet had previously made vehicle-accessible under the leadership of Mr. Payet, a member of the Baie Lazare SPPF branch committee . Before the Commission, Mrs. Pool maintained that she was unaware of the LRP taking place on her land, and that as she was unaware, she did not protest at the time the acquisition by the Government of the road that clearly had formed part of her property pursuant to the 1949 survey of Mr. Savy. Mrs. Pool's assertions were refuted by Mr. Hoareau, who claimed that she was aware of the LRP and that the time for her to have protested the alleged taking of her land was prior to the registration of her parcel under the LRP and that as she had not done so she was estopped from bringing her complaint now.

151. The Commission notes that Mr. Hoareau strongly advocated that Mrs. Pool knew that her land was being surveyed as part of the LRP because of the notice that was allegedly served on her and public announcements made about the project. Nonetheless, there was nothing on file to prove that the demarcation notice identified as claim 722 was actually served on Mrs. Pool or that she was present at the survey of her property during the LRP. In that regard, the Commission notes that there was no requirement under the Adjudication of Title Decree that a survey of land only be conducted in the presence of a person claiming ownership. Moreover, the Commission notes that Mrs. Pool was not served with other demarcation notices that concerned the boundaries of her property and that of her other neighbours, which could have equally impugned the correct record of her boundaries. However, at the time Mrs. Pool made her request to sub-divide her property prior to the allocation of parcel number T703, she was then informed that it was recently surveyed by the LRP. According to Mr. Hoareau, it was once she knew that the burden was on her to make certain of the boundaries that Mrs. Pool agreed with the boundaries of her property as set out in T703.

152. In this respect, the Commission notes that as was communicated in Mr. Denis Barbe's undated letter as Director of Surveys above, the Government's position was that the time to dispute a boundary allocation pursuant to the LRP was at the time that exercise was carried out. Absent protest at that time, the Government authorities were simply not willing to investigate the boundaries any earlier than those that were recorded in T703. The question for the Commission is whether in all the circumstances, the approach of the Government authorities was lawful. In the circumstances, the Commission is not so satisfied.

153. In this respect, the Commission recalls the explanation provided by Mr. Hoareau with regard to the discrepancies between the 1949 survey and the Government parcel T706. Mr. Hoareau specifically referred to provision 14(b) of the Adjudication of Title Decree 1979, which gave the Demarcation Officer special powers to "re-allot boundaries of any land to ensure the more beneficial occupation thereof...". The Commission considers it satisfied on the balance of probabilities that the application of this provision was applied to Mrs. Pool's plot, T703, with the adjudicator re-allocating the boundaries to remove the Dame le Roi Road from Mrs. Pool's parcel because that road was servicing the community of Baie Lazare. Notably, in identifying this provision to the Commission, Mr. Hoareau failed to indicate that this power could only be exercised "with the consent of the owner".

154. Notably, sometime after the hearing of this case, Mr. Hoareau produced a letter dated 13 February 1978, which purported to evidence a negotiation between Mrs. Pool and Government for the purchase of the Dame le Roi Road from Mrs. Pool for SR 2,000. The letter claimed that the Minister had negotiated with Mrs. Pool and that she had been paid SR 500, and the balance was available for

payment at any time. In light of the evidence received, the Commission is not satisfied that this document alone can rebut the claims made by the Pools. Notably, there is no evidence of any deed of transfer, transferring the land to Government, as was instructed in that letter. This failure is indicative that this agreement was not finalised, nor consented to by Mrs. Pool, the owner of the land.

155. Accordingly, the Commission is satisfied on a balance of probabilities that the LRP in surveying Mrs. Pool's land amended the boundaries of her land to allocate the road built on her property to the Government, and that it did so purportedly pursuant to Article 14(b) of the Adjudication of Title Decree but without adhering to the requirements of that provision which required it to obtain the consent of the owner. The Commission notes that this would have made the process unlawful.

156. The Commission is satisfied that consent was not obtained from Mrs. Pool and that the removal of the road from her property was an unlawful act. As the original act in undertaking the LRP was unlawful, the Commission does not consider it fair to allege that the burden was on Mrs. Pool to challenge that act. Rather, the burden was on the LRP to act within the confines of the legal powers it had been given. Accordingly, the Commission does not accept that Mrs. Pool's failure to object at the time the unlawful act was done can act to deny her a remedy for that action today.

157. In this respect, the Commission considers that a landowner who previously had their land surveyed had a reasonable expectation that the officials charged with implementing the LRP would abide fully by the boundaries indicated in those original survey plans. That is a reasonable assumption for any citizen to make in a society committed to the rule of law. While Mr. Hoareau emphasised that the burden was on Mrs. Pool to challenge the boundary allocations, as the Commission has already determined that the LRP was acted unlawfully, it considers the placement of such a burden to be grossly unfair. In conditions where the Government surveyed property and in doing so removed a private road from Mrs. Pool's property and made it a public road as part of the Government's abutting land, the Commission finds that the first element has been satisfied as the LRP was enacted in an unlawful manner.

158. Regarding the second and third elements, the Commission finds that when the land was registered to the Government, there was a substantial and material impact on Mrs. Pool's ability to use or sell the land. This clearly satisfies the second and third elements of the violation, as the physical or real property had been obtained in a way that was an interference to the victim's enjoyment and use of their property.

159. The Commission is satisfied that no compensation at all was provided for title of Dame le Roi Road as Mrs. Pool received no compensation for this property. As such, the fourth element of a lack of adequate, prompt, and effective compensation is fulfilled.

160. Finally, regarding the "perpetrator" element, the Commission notes that it is unable to identify with specificity the individuals who were responsible for carrying out the logistics of the LRP in an unlawful manner. However, the Commission recalls that the LRP was a project enacted and enabled by the Government, fully funded by the British, and undertaken by the Government and the relevant ministries. In such circumstances, while the Commission is unable to identify individuals to accord perpetrator status, the Commission nonetheless deems the unlawful acts as those of the State, for which the State should be found responsible. In this regard, the Commission recalls the LRP was a project

undertaken by the Government between 1980 and 1990, with the aim to survey and register the land of the Seychelles, the acts that led to the violation of the proprietary rights can be imputed to the State.

161. On the basis of the foregoing, the Commission is satisfied that Mrs. Pool suffered the violation of unjustified acquisition of property in relation to Dame le Roi Road.

2. Abuse of Office – Location of the Road in Relation to Mrs. Pool's Approved Plans

162. The second complaint of Mrs. Pool concerns the construction of a road through her property that interfered with her plans to build a house on the property, plans to which she had obtained planning approval prior to the Government's decision. The Commission finds that this claim of an abuse of office by a Government official under Section 2(8)(l) of the TRNUC Act[15] is also made out.

163. At the outset, the Commission finds regarding its admissibility requirement that the alleged redirection of the road through Mrs. Pool's property preventing her from building her dream house was done in 1985, during the Commission's primary temporal mandate. Further, the Commission recalls that Mrs. Pool was a supporter of the Macham Government when she spoke to Dr. Ferrari, a senior official within the SPPF Government, regarding issues with the Government roads going through their property. As Dr. Ferrari was an individual who participated in the Coup and was empowered through the Coup d'état to work in many Government positions and is at the centre of the claim that the State works were directed in a manner that would negatively impact Mrs. Pool, who had already received approval from the Planning Division to build her new house, the Commission also finds that its thematic mandate is met.

164. The Commission recalls the that an abuse of Government authority requires 1) the use of the capacity and powers of a public office 2) to restrict the specific rights or freedoms of a person 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.

165. With regard to the first element, the Commission recalls that Mrs. Pool had received planning approval to build a new house on her property from the Planning Division of the Ministry of Lands. Shortly thereafter, the Government revealed plans to build the new road on Mrs. Pool's land. The Commission recalls the evidence that when Mrs. Pool attempted to discuss the new plans, Dr. Ferrari, a Government official, had told Mrs. Pool, "Madam if you insist, I'm going to put the road right on your veranda". The Commission is thus satisfied that there was a use of the capacity and powers of a public office, in fulfilment of the first element.

166. Second, the Commission recalls that it has previously found that the violation of abuse of office, includes discrimination or victimisation based on real or perceived political opinion or that is otherwise legally baseless or arbitrary.[16] It recalls that equality before the law, non-discrimination, and freedom from fear of Government abuse are basic principles of human rights law, rising to the level of customary international law as enshrined in the Universal Declaration of Human Rights.[17] Further, the

[15] TRNUC Act, sec. 2(8)(l).
[16] *See* Case Determination No. 003: Daniel Auguste, para. 122.
[17] Universal Declaration of Human Rights [UDHR], arts. 1, 2, 7, 12, G.A. Res. 217 (III), 10 December 1948.

Commission recalls that Mrs. Pool also has the right not to be arbitrarily deprived of her property.[18] The Commission finds that the latter right in particular has been violated in the current case as Mrs. Pool's right to her property has been greatly restricted through the creation of the road, the Commission finds that the second element has also been met.

167. Third, the Commission finds that in ensuring the road abutted onto where Mrs. Pool had planned to build, without her consent, Dr. Ferrari strayed from the proper purposes of the law of his position as Minister of Lands, making the restriction of Mrs Pool's rights arbitrary or unlawful in satisfaction of the third element. In this regard, the Commission recalls that the land the road was built on, belonged to Mrs. Pool and she had received planning permission to build her new house in that vicinity, prior to the road being proposed. Mrs. Pool gave evidence that there were other areas of the land that could have been used, that she may have consented to the use of, for the road; however, due to Mrs. Pool complaining, *ek nou, pa ek nou*" was relied on in the making of many Government decisions. The Commission notes that it is likely that requesting the Government to change their planned actions was perceived as a critique which was sufficient to further alienate the Pools from the Government.[19] In these circumstances, the Commission accepts that due to the availability of other land on which to build the road that did not impact on Mrs. Pool's approved plans for the new house, in light of a lack of evidence describing the reason(s) that Mrs. Pool's land was chosen, and their known political allegiances, suggests that the decision was on the balance of probabilities arbitrary, and thus an unreasonable restriction of Mrs. Pool's rights to use her land.

168. Finally, in consideration of the "perpetrator", the Commission finds that Dr. Ferrari bears responsibility for the abuse of office that led to the road being built through the area set out for Mrs. Pool's house. The Commission recalls that Mrs. Pool had approached him to seek assistance with her concerns regarding the route of the road, with an expectation that he, as the Minister of Lands, would be able to influence the routing of the road.

169. The Commission further finds that the actions above were done by Dr. Ferrari in his official capacity as the Minister of Lands, and as such can be imputed to the State.

170. Therefore, on the balance of evidence before it, the Commission finds that Mrs. Pool suffered the violation of abuse of office by a Government official under the TRNUC Act.

3. Unjustified Acquisition of Property T792

171. Turning to the legal rights to claim the road in the sub-division that has been considered to make up part of the parcel T792, sold to the Lucs. In regard to the required nexus to the Coup admissibility, while the Commission acknowledges the subdivision occurred in 1985 which would implicate the temporal aspect of the mandate, the inquiry is more properly placed on the actions of Mrs. Pool. First, the Commission considers that a main issue in this case is whether the approach taken by the Government was one which was fair to Mrs. Pool. In this respect, the Commission notes that it is satisfied that Mrs. Pool had not intended to include the road in the subdivision sold to Mrs. Luc and as

[18] UDHR, art. 17(2).
[19] The Commission notes that it was widely known that the Pools were close to and supporters of the deposed Mancham.

such was deprived of her property rights in relation to the road which was erroneously registered to the Lucs.

172. In this respect, however, the Commission notes that the Government were not involved in the transaction between Mrs. Pool and the Lucs. The Commission notes that the survey drawing that accompanied the sale of parcel T792 to the Lucs was ambiguous with respect to the boundary of the parcel sold. It referenced that parcel as bounding the edge of the road on one side without specifying whether it was the inner or outer boundary of the road. The survey drawing of parcel T792 showed two boundary lines: a solid line boundary on the outer edge of the road and a dotted boundary on the inner edge of the road. The Commission accepts that a layperson viewing this drawing and its description would have difficulty determining with accuracy the actual relationship of the boundary of parcel T792 to that road. According to general practice, the solid boundary has been taken by Government as representing the actual boundary of T792. Therefore, the Commission finds that that road more likely than not forms part of the property sold to Mrs. Luc.

173. The Commission notes that there was nothing on the land file indicating an instruction not to include the road in the land sub-divided for sale, that had been given by Mrs. Pool to the surveyor. However, when she began to negotiate with Government for compensation for this road that formed part of land parcel T792, Mrs. Pool was alerted by at least that time, that despite her alleged instruction, the road had not been excised by the sub-division and was included within parcel T792.

174. While the Commission appreciates that Mrs. Pool did not wish to pay the SR 7,000 sought by the Government authorities to rectify the survey plan of T792 to meet with her claimed instructions, the Commission determines that it was nonetheless incumbent upon her to gather some proof of her intention from the Lucs with respect to the intended boundaries of the parcel sold to preserve her rights. This could have been as simple as a signed statement from Mrs. Luc that she understood that the road was not intended to be part of the land parcel T792 that was sold to her.

175. In the circumstances, the Commission is not satisfied that the action of the Government in charging a fee to alter the registration of the property had any impact on Mrs. Pool's right to claim her interest in the land. In that respect, the Commission considers that it was incumbent on the Pools to have pursued their claim to the properties, through paying to have the land resurveyed, or make a claim before the Courts, which they failed to do. The Commission therefore finds that the Coup nexus of this claim has not been met.

176. The Commission finds it unnecessary and beyond their mandate to provide further comment on the legal rights attached to the contested properties given the failure to establish a nexus to the Coup d'état.[20]

177. Based on the above, the Commission finds on a balance of probabilities that Mrs. Pool did not suffer the violation of unjustified acquisition or loss of property under the TRNUC Act in relation to the inclusion of the road as part of T792.

[20] TRNUC Act, sec. 2(2)

4. Government Sub-division of T1806 into T1928, T1929, T1930, and T1931 to Create Government Roads T1928 and T1930

178. The next complaint of Mrs. Pool concerns a sub-division of her land without her permission, and hence illegally, to create two roads T1928 and 1930. The Commission has found that this act consists of two separate violations: unjustified acquisition of property under Section 2(8)(h) of the TRNUC Act,[21] and abuse of office under Section 2(8)(l) of the TRNUC Act.[22]At the outset, the Commission considers it important to note that the planning diagram accompanying the request for the sub-division showed that this road reserve clearly formed part of parcel T1806. Yet, Mr. Hoareau submitted before the Commission that perhaps the ownership was unknown. The Commission rejects this submission as false as parcel T1806 was clearly registered in the name of Mrs. Pool. It is also dubious to submit that the parcel, which had originally been extracted from a larger parcel of land, T794, by the Survey Division itself, was uncertain as to its boundaries or its ownership.

179. Regarding the required admissibility link of this violation to the Coup, the Commission is satisfied that this chapeau element has been established. The Commission notes that the alleged acts occurred in 1996, which clearly falls outside the Commission's primary temporal mandate, the Commission is nonetheless satisfied that its thematic mandate is met. In that respect, the Commission finds that the complainant has demonstrated that the alleged human rights violation arose because of the political system that was introduced in Seychelles following the Coup d'état of 1977. The Commission recalls that the political system in question perpetuated an unjust system of patronage that provided benefits to supporters and discriminated against those perceived to be against the party. In the current complaint, the Commission notes that Mrs. Pool and her family were known supporters of the deposed former president, Mr. Mancham. In these circumstances, where the property interests of opposition supporters have been negatively impacted without consultation, the Commission is satisfied that its thematic mandate has been met.

i. Unjustified Acquisition of Government Roads T1928 and T1930

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

181. In regard to the appropriation of the land for the roads, the Commission has no difficulty in finding that the acts were unlawful and amounted to an acquisition. At the outset, the Commission notes that title for T1928 and T1930 remains with Mrs. Pool; however, Mrs. Pool had no desire for her property to be subdivided in such a manner and did not have a desire for public roads to be going across her property. Although technically the title still rests with Mrs. Pool, the Commission notes that the continued pressure and communication from the Survey Division for Mrs. Pool to relinquish title, and the fact Mrs. Pool no longer has clean title to her property which now houses public roads. As such, the Commission finds that there has been an acquisition in all but title.

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[21] TRNUC Act, sec. 2(8)(h).
[22] *Id.*, sec. 2(8)(l).

182. The Commission recalls that the roads were excised on 12 May 2002 and there is no evidence on the land file to show that the Survey Division contacted Mrs. Pool prior to sub-dividing her land to excise the two roads from parcel T1806. Instead, all the documentary evidence shows, is an application being made by the Ministry of Lands to Survey Division in its own right. There is no evidence of Mrs. Pool being consulted or agreeing to that sub-division, although she may have become aware of it at a later stage. The Commission thus determines on the balance of probabilities that the approach of the Survey Division was illegal. As Mr. Hoareau made clear in his submission, the Government had no authority to sub-divide Mrs. Pool's land without her permission. Indeed, the fact that Government did so was in contravention of the Lands Registration Act and the Land Acquisition Act, the existing legal framework on land takings. Per Mr. Hoareau's own admission, the Commission is satisfied that the excise of the roads was unlawful, in satisfaction of the first element.

183. The Commission comfortably finds the second and third elements to be satisfied as Mrs. Pool was deprived of her physical and real property, as her land and buildings were excised and then turned into Government roads, which Mrs. Pool had no desire for her land to be used as such.

184. Regarding the fourth element, the Commission is satisfied that no compensation at all was provided in exchange for the excise of T1928 or T1930, as Mrs. Pool never received compensation for her property despite a lengthy negotiation.[23] Based on the evidence that the Ministry of National Development and Mrs. Pool have not come to agreement, the fourth element of a lack of adequate, prompt, and effective compensation is fulfilled.

185. Finally, regarding the "perpetrator" element, the Commission notes that it is unable to identify all of the individuals by name who were responsible for the Survey Division proceeding with the subdivision of T1806. However, as this was an act done by the State in furtherance of the State's desire to have roads servicing other blocks, the Commission has no issue with finding that responsibility for the violation may be imputed on the State.

186. Based on the evidence before it, the Commission is satisfied on the balance of probabilities that Mrs. Pool suffered an additional violation of unjustified acquisition of property with reference to parcels T1928 and T1930.

ii. Abuse of Office – Subdivision of T1806

187. The Commission recalls that Mrs. Pool alleged that there was an abuse of Office by the Government through the building of two roads on Mrs. Pool's property to significantly devalue her property by creating "islands of land" as opposed to the large block of land it was previously. The Commission finds on the balance of probabilities that this claim has been made out under Section 2(8)(l) of the TRNUC Act.[24]

[23] The Commission has not received any evidence that the issue was resolved between Mrs. Pool and the Government of Seychelles, the final offer which has been evidenced being from the Principal Secretary for National Development offering the Pools SR 100,000 on 29 October 2009.
[24] TRNUC Act, sec. 2(8)(l).

188. The Commission recalls that an abuse of Government authority requires 1) the use of the capacity and powers of a public office 2) to restrict the specific rights or freedoms of a person 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.

189. The Commission also accepts it has been established to a balance of probabilities that it was the decision of the Government, particularly the Survey Division, to sub-divide the land and build roads to service the blocks within the subdivision. In these circumstances, the Commission is satisfied that there was a use of the capacity and powers of a public office, in satisfaction of the first element.

190. As above, the Commission recalls that it has previously found that the violation of abuse of office commonly includes discrimination or victimisation based on real or perceived political opinion or that is otherwise legally baseless or arbitrary.[25] It recalls that equality before the law, non-discrimination, and freedom from fear of Government abuse are basic principles of human rights law enshrined in the UDHR.[26] Further the Commission recalls that Mrs. Pool also has the right not to be arbitrarily deprived of her property.[27] As these rights were violated as found in the previous section, the Commission finds that the second element has also been met.

191. In regards to the third element, recalling its above finding that the decision to subdivide the land without Mrs. Pool's consent was unlawful, the Commission finds that the Survey Division strayed from the proper purpose of the law in restricting Mrs. Pool's rights. Further, the Commission also recalls that the Pools had been close with Mr. Mancham, and the principle of "*ek nou, pa ek nou*" was still heavily relied on in the making of many Government decisions, even after the reintroduction of the multi-party system. In these circumstances, the Commission cannot rule out that Mrs. Pool's properties were targeted on the basis of her known support for Mr. Mancham and perceived opposition to the Government that had taken power with the coup' d'état of 1977.

192. Finally, in consideration of the "perpetrator", the Commission notes as above that it has not been provided with the names of those at the Survey Division, and thus it is unable to find a particular individual who should be found to bear perpetrator status. Regardless, the Commission notes that the Government officials in question acted within their official capacities, and as such, their responsibility can be attributed to the State.

193. Therefore, on the balance of evidence before it, the Commission finds that Mrs. Pool suffered the violation of abuse of office by a Government official under the TRNUC Act.

V. RECOMMENDATIONS ON REPARATIONS

194. The Commission recommends that the Mrs. Pool be awarded reparations in accordance with the Commission's Reparations policy for the violations found above.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

[25] *See* Case Determination No. 003: Daniel Auguste, para. 122.
[26] UDHR, arts. 1, 2, 7, 12.
[27] UDHR, art. 17(2).

195. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 058.

196. 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

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner