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**Case No.: 059**

**The Truth, Reconciliation and National Unity Commission**

**In the Complaint of Jerrick Ernesta**

**31 December 2022**

**Determination on the Complaint of Jerrick Ernesta**

**Complainant:**

Jerrick Ernesta

# 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 Mr. Jerrick Ernesta was filed before the Commission on 9 August 2019. Consequently, Mr. Ernesta's complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Further, pursuant to Section 2(8), the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977. The requirement that a complaint be related to the Coup d'état of 1977 requires the Commission to establish that there is an alleged connection between the allegation and the Coup d'état of 1977. Pursuant to Rule 25(2) of the Rules, a complaint "[...] will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission". The threshold for admissibility to be granted is low, though a complaint deemed by the Commission to be admissible may later be deemed inadmissible following investigation.

6. In his complaint, Mr. Ernesta alleged that his taxi licence was revoked in 1982 in the interests of the security of the country, following which he was refused other employment. Mr. Ernesta claimed that he was subjected to threats and intimidation by a high-ranking member of the army and was followed on more than one occasion, leading him to fear for his life. In response to the threats and intimidation, he exiled to the United Kingdom and then Canada. When he returned to Seychelles, he continued to be victimised by the authorities and was denied planning permission and the allocation of land for his

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

daughter. The Commission characterises the complaint of Mr. Ernesta as alleging wrongful termination of employment, wrongful denial of the right to employment, abuse of office by Government authorities, and forced exile.

## II. PROCEDURAL HISTORY

7. Satisfied that the complaint of Mr. Ernesta alleged violations of human rights related to the Coup d'état of 1977, the Commission rendered his complaint prima facie admissible on 27 August 2019.

8. On 16 October 2019, the Commission began hearing evidence in the case of Jerrick Ernesta.[2] The Commission heard evidence from four (4) witnesses.[3]

## III. EVIDENCE RECEIVED

9. Mr. Jerrick Ernesta stated before the Commission that he had been a Seychelles People's United Party (SPUP) supporter. In April 1973, he participated in the strike organised by the SPUP during which they were tear-gassed by the police. At the time, Albert René told the supporters not to worry if they did not win the next election, as they would crush the opposition and take over the country. However, after some time, Mr. Ernesta disagreed with the SPUP's policies and started criticising them.

### A. Mr. Ernesta's Employment Claims

10. Mr. Ernesta was employed as a taxi driver in Seychelles. On 31 August 1982, his taxi licence was revoked. Mr. Ernesta claimed that when he arrived at the taxi stand on 2 August 1982, James Pillay, the Police Commissioner and Seychelles People's Progressive Front (SPPF) supporter, saw him there and called him over to the police station. When Mr. Ernesta went to speak to him, Mr. Pillay took him inside the station and accused him of having helped organise the mercenary attack in 1981[4] alongside a friend of his, Bill Mohammed. Mr. Pillay also accused Mr. Mohammed and Mr. Ernesta of being in the opposition party, and of being against the Government. Mr. Bill Mohammed had been the security guard to deposed President Mancham and worked in the police department. Mr. Ernesta claimed that he was then detained for six hours at the police station, despite having refuted such allegations. Shortly thereafter, Mr. Ernesta's taxi licence was revoked. Mr. Ernesta stated that he was deemed guilty due only to his opposition to the Government of Albert René.

11. Mr. Ernesta informed the Commission that Mr. Philippe Revera was in charge of the licensing office at that time, and he had informed Mr. Ernesta that his licence had been revoked for national security reasons. Mr. Ernesta claimed that he never received a letter from the authorities outlining the reasons for the revocation of his licence.

12. Mr. Ernesta advised the Commission that he did not reapply for his taxi licence after it was revoked, but only did so after the introduction of multi-party politics in 1993. He obtained his licence three

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[2] Hearing No. 12 of Wednesday, 16 October 2019, Jerrick Ernesta.
[3] Phillipe Revera, Hearing No.18 of Wednesday 16 October 2019; Frank Marie, Hearing No.18 of Wednesday 16 October 2019; Phillipe Lucas, Hearing No.162 of Friday 4 June 2021.
[4] *See* Final Report, Volume II.

months after that application. Mr. Ernesta stated that this was testament that the revocation of his licence was made on political grounds.

13. On 16 October 2019,[5] the Commission called Mr. Phillipe Revera, who worked at the Seychelles Licensing Authority (SLA) from 1977 until 1986. He explained to the Commission how the SLA operated. Mr. Revera explained that the licensing board was made up of three persons, including a chairman and two other members. The chairman was the Minister for Defence, Mr. Ogilvy Berlouis. The two other members were the Commissioner of Police and the Principal Secretary for Transport. The procedure to apply for a licence involved the applicant filing in a form, before Mr. Revera compiled information from the police and the Taxi Association, and subsequently presenting them to the licensing body. Sometimes, the Chairman declared that a certain application would not be considered on the grounds that the President had decided that the applicant should not be issued a licence. Mr. Revera could not question such a decision; his role was only to convey the decision made by the SLA to the applicants.

14. Mr. Revera claimed that in the cases where the applicants were considered unsuitable, the reasoning behind the decision was mostly political. The reason provided in cases where an application was rejected was that the person constituted a security risk. Mr. Revera recalled that even people that had a criminal record, or other disqualifying factors, would be granted a licence on the grounds that the President had decided that person must be granted a licence.

15. Mr. Revera recalled one occasion where an applicant, a former police officer, was known to be of good character but was refused a licence. Mr. Revera thought that this was because the applicant was not a supporter of the regime. When asked about the basis of the denial, Mr. Berlouis told the Commissioner of Police to ask the President. This comment silenced the Commissioner.

16. Mr. Revera noted that he had to communicate to Mr. Ernesta that his licence had been revoked. He noted that there was no avenue to appeal such decisions. Mr. Revera advised the Commission that while he could not ascertain whether the President interfered in the licensing body's decision on Mr. Ernesta's application, he recalled there being very little discussion about the decision itself. Mr. Revera speculated that it may have been that they wanted to punish Mr. Ernesta, as this was a common way of doing so at the time. Mr. Revera further noted that licensing was a means by which the Government could have full control over transport. The Government decided who could drive a bus and who could have a licence to drive a taxi. Mr. Revera left the SLA when it became clear to him that he would not be promoted any further.

## B. Victimisation and Harassment

17. During the period from 1982 to 1985, Mr. Ernesta stated that he used to spend his free time after work at the Happy Youth Club in Victoria opposite the Cathedral, where he would play dominoes and drink beer. One day after his taxi licence was revoked, he was approached by Mr. Didier Amblavany (deceased). Although his family name was Ernesta, Mr. Amblavany used to call him Mr. Azemia for reasons known only to him. Mr. Ernesta claimed that it was common knowledge that Mr. Amblavany was an associate and collaborator of Mr. Philippe Lucas, a military officer in the René Government and one of the original participants of the Coup d'état.

[5] Hearing No.18 of Wednesday 16 October 2019.

18. Mr. Amblavany called Mr. Ernesta over and pretended to engage in conversation with him. Mr. Ernesta claimed that without warning, Mr. Amblavany struck Mr. Ernesta in the face, breaking his eyeglasses, and then immediately ran away. Later, when Mr. Ernesta left the Happy Youth Club to go home in his car, he claimed that he was near the town bus station when he heard a car honking behind him. The car was driving erratically and attempted to overtake him. Mr. Ernesta looked in his side mirror and saw a car with the plate number S232 or 262, which he knew to be a car driven by Mr. Lucas. Mr. Ernesta tried to prevent him from overtaking. He claimed that Mr. Lucas continued to follow him until he reached the turn for the road to his house. At that time, Mr. Ernesta took a sharp left and went straight home. Mr. Lucas did not follow him to his house.

19. Mr. Ernesta stated that on another occasion, when he was in his parked car, Mr. Lucas opened the door and got into his car. He sat there and asked Mr. Ernesta to tell him "what Mancham would have done for this country". Mr. Ernesta responded that Mancham did not get the chance to prove himself, and that "the good he would have done began when he gave René a chance in the coalition Government". Mr. Ernesta told Mr. Lucas that it was pure greed that made René do what he did.

20. Mr. Ernesta claimed that shortly thereafter, he began to feel that his life was in danger in the Seychelles, and that if he stayed, he would be killed.

## C. Forced Exile

21. In 1987, following the time in which Mr. Ernesta claimed he was subjected to intimidation by Government actors, Mr. Ernesta stated that he sold his truck and went into exile in England. However, Mr. Ernesta recalled that he could not adapt to life in United Kingdom, and returned to the Seychelles after three months. Even though he felt his life was at risk in the Seychelles, he said he loved his country and wanted to return.

22. Mr. Ernesta advised the Commission that when he returned, his search for employment was consistently unsuccessful. He even tried getting a job at the Indian ocean tuna factory, but was denied. He was also continuously subjected to intimidation and threats by supporters of the Government of Albert René.

23. Mr. Ernesta stated that he was harassed and intimidated by Mr. Lucas in a car with the number 232, and an unidentified man from North East Point in another car numbered 1122. With the knowledge that his life was in danger, Mr. Ernesta went into exile again in Canada on 27 August 1987. Mr. Ernesta recalled that it was extremely difficult for his family at that time. He had four children, the oldest of whom was 10 years old and the youngest just four years old. Before leaving, Mr. Ernesta had to sell one of the two properties he owned in order to survive. This decision was also prompted by Government policy at the time, which did not allow a person to own more than one property.

24. Mr. Ernesta spent one year and three weeks in Canada. One day, he called Mr. Frank Marie, who worked as security personnel for Mr. René, and he was the cousin of Mr. Ernesta's mother. Mr. Ernesta asked Mr. Marie to make inquiries with René to ascertain whether Mr. Ernesta could return to Seychelles. Mr. Marie conveyed to him that the latest information that he had was that Mr. Ernesta could return.

25. In September 1988, Mr. Ernesta returned to Seychelles. When he returned, he sought employment at various places, but was told that he did not have security clearance and was not successful. He later purchased a truck and worked to provide for his family.

26. The Commission also called Mr. Frank Marie on 16 October 2019.[6] Mr. Marie advised the Commission that Mr. Ernesta was related to him. Mr. Marie confirmed that Mr. Ernesta called him and asked him about the possibility of returning to the Seychelles. Mr. Marie stated that Mr. Ernesta was afraid that he might be apprehended by the army if he returned. Mr. Marie told him that no one would arrest him, and that as a Seychellois he had the right to return to his country. Mr. Marie stated that on hearing this, Mr. Ernesta responded, "Ok" but did not tell him anything else. A while later, Mr. Marie saw him in the Seychelles driving in a taxi, and so knew that he had returned.

27. Mr. Marie stated that he was confident that Mr. Ernesta would not have been arrested because, at that time, no arrests were being carried out. Mr. Marie claimed he knew from the atmosphere at the time that it would be safe for Mr. Ernesta to return. He also stated that although he was a bodyguard to Mr. René, he did not consult with the President regarding Mr. Ernesta's return. When pressed as to whether President René had to grant permission for Mr. Ernesta to return to Seychelles, Mr. Marie reiterated that there was no need for the President to give permission as the situation was calmer at that time. Mr. Marie stated that he was unaware as to whether the President even knew that Mr. Ernesta had left the Seychelles.

28. Mr. Marie stated that he had not been aware that Mr. Ernesta experienced harassment and intimidation, and challenges in securing employment. They met a few times after Mr. Ernesta's return to Seychelles, but never discussed such issues.

## D. Abuse of Office by a Government Official

29. Following his return to the Seychelles after living in exile, Mr. Ernesta stated that he purchased a plot of land next to the parcel he already owned. In 1994, a high-ranking officer of the Planning Authority, Mr. René Michaud, visited his property and commented that it was a nice place. He encouraged Mr. Ernesta to enlist someone from his office to prepare a building plan for the site. Mr. Ernesta paid the Planning Authority SR 5,000 for the plan that they prepared. However, Mr. Ernesta claimed that the Planning Authority then refused to approve the plan they had prepared. When Mr. Ernesta inquired about the reason, he was told to look elsewhere for planning approval, even though no other office had the authority to grant such approval.

30. Mr. Ernesta further claimed that in the period from 1993 to 1994, he applied for a piece of land for one of his daughters on La Digue. He said that this request was also refused.

31. Mr. Ernesta stated that he wished the Commission to ascertain why he was victimised and he would seek compensation for the hardship he suffered as well as the intimidation and threats which scarred part of his life. He stated that he would also like to receive an apology from Mr. Lucas.

## E. Suspect Notifications

[6] Hearing No.18 of Wednesday 16 October 2019.

32. In response to Mr. Ernesta's allegations the Commission served a suspect notification on Mr. Lucas on 27 September 2019. Mr. Lucas responded to that suspect notification by way of affidavit on 21 October 2019. In that affidavit, Mr. Lucas claimed that he did not recall any incidents involving Mr. Ernesta during the period 1982 until 1985. Further, that he did not know Mr. Ernesta's place of residence.

33. On 4 June 2021, the Commission had scheduled Mr. Lucas to answer allegations before the Commission in numerous cases, including that of Mr. Ernesta. During that appearance Mr. Lucas continued to deny involvement in any human rights violations against any person.[7]

## IV. FINDINGS OF THE COMMISSION

### A. Mandate and Applicable Law

34. 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".[8] These principles must guide the Commission's determination of whether the conduct alleged constitutes human rights abuse pursuant to its Act.[9]

35. 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.[10]

36. 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".[11] Any finding of individual responsibility is to a balance of probabilities standard.[12] 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

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[7] Hearing No. 162 of Friday 4 June 2021.
[8] TRNUC Act, secs. 3(9), 6(8)(a).
[9] *Id.*, section 2(8).
[10] 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".).
[11] *Id.*, sec. 7(b).
[12] *Id.*, sec. 6(8)(c).

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.

37. The Commission further notes that a persons who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any violation and [offering] sincere apologies to the victim or victims".[13] The Commission considers that these provisions, in light of Sections 3(9) and 6(8)(a), provide sufficient protection for the human rights of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

38. The Commission notes that while each alleged human rights violation will be assessed by reference to universally recognised legal standards and human rights norms, that enquiry does not render the domestic legal framework in which the alleged violation took place irrelevant. The domestic legal framework is instead an important starting point for the examination as to whether the act complained of was legal and then whether it breached human rights standards and norms.

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

40. 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.

41. 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.

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

## B. Approach to the Evidence

42. 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.

43. 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.

44. 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.

45. 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. Employment Violations

46. The Commission first turns to the employment claims of Mr. Ernesta, which it characterises as the violations of abuse of office under Section 2(8)(l) of the TRNUC Act[14] and wrongful denial of the right to employment under Section 2(8)(i) of the Act.[15] The Commission notes these claims are interrelated in this case, the denial of his taxi license being more likely than not on the discriminatory grounds of his political affiliation and leading to a denial of security clearance and thus systematic denial of employment. As such, the Commission will analyse both claims together in this section.

47. Considering the required admissibility nexus to the Coup d'état of 1977, the Commission finds that both claims meet its primary temporal mandate, from roughly 1977 to 1993, as Mr. Ernesta's taxi license was revoked in 1982, and he thereafter faced great difficulty in finding employment. In addition,

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[14] TRNUC Act, sec. 2(8)(l). The Commission notes that this violation is being considered rather than that of wrongful termination of employment under Section 2(8)(i), as Mr. Ernesta was self-employed as a taxi operator. Although the violation under Section 2(8)(i) can apply to jobs in either the public or private sector, the Commission notes that this fact of self-employment suggests that Mr. Ernesta cannot be "terminated" as such. Therefore, the Commission considers that the violation of abuse of office more accurately describes the effect of the revocation of Mr. Ernesta's taxi license on his human rights.

[15] *Id.*, sec. 2(8)(i).

the claims meet the Commission's thematic mandate as being related to the Coup, as the Commission finds it more likely than not that the revocation and subsequent denial of employment were done based on a belief that Mr. Ernesta was with the opposition and against the Government, and even involved in mercenary efforts to overthrow the Coup-installed Government. Therefore, the claims are admissible before the Commission.

i. Abuse of Office – Revocation of Taxi License

48. The Commission has considered that the violation of abuse of office constitutes the 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.[16]

49. First, the Commission is easily satisfied that the licensing officials who decided to revoke Mr. Ernesta's license used the capacity and powers of their public office to do so. The Commission recalls that this would have been a decision of the Seychelles Licensing Authority, a Government body. As such, the first element is met.

50. Second, the Commission finds that while Mr. Ernesta had no legal or human right *per se* to approval or continuation of a taxi license, and there are more likely than not several reasons for which a license can be revoked, Mr. Ernesta did—and does—have a fundamental right to the enjoyment of his rights, including his right to work, without distinction of any kind, including on the basis of real or perceived political opinion.[17] The Commission finds that this right to be free from discrimination, in conjunction with Mr. Ernesta's rights to work and to equality before the law, was restricted by the decision of the SLA to revoke his taxi license. Thus, the second element is satisfied.

51. Third, considering the motive for the restriction on Mr. Ernesta's right to work, the Commission finds that similar to above, although the revocation or denial of a license *per se* is not illegal under Seychelles domestic legal framework, in this instance, the revocation of Mr. Ernesta's license was more likely than not discriminatory as it was politically motivated owing to his opposition to the SPUP/SPPF. Because Mr. Ernesta's right to work also includes enjoyment of that right without distinction of any kind, including on the basis of real or perceived political opinion,[18] the Commission finds that the revocation of Mr. Ernesta's license under the present circumstances was more likely than not arbitrary and thus unlawful. The Commission further recalls in this regard Mr. Revera's evidence that the process of granting licenses was subject to interference by the President and was politically influenced, and the Commission also notes the hostile political climate against dissidents, the harassment and intimidation against Mr. Ernesta for his political leanings and affiliations with individuals like Bill Mohammed who were affiliated with former President Mancham, which indicates that there was no legitimate basis for the revocation of his license. As such, the second element is also met.

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[16] The Commission further notes that this violation commonly, though not exclusively, includes discrimination or victimisation based on real or perceived political opinion or that is otherwise legally baseless or arbitrary. It recalls that equality before the law, non-discrimination, and freedom from fear of Government abuse are basic principles of human rights law enshrined in the Universal Declaration of Human Rights (UDHR), and that these rights may be violated when a Government official abuses the power of their office. *See* UDHR, G.A. Res. 217A (III), 10 December 1948, arts. 1, 2, 7, 12.

[17] *See id.*, art. 2, read in conjunction with arts. 7, 23.

[18] *See id.*, art. 2. *See also id.*, art. 20 (right to freedom of association).

52. Regarding the perpetrator(s) who may bear responsibility for this violation, the Commission finds that President René more likely than not bore primary responsibility for the decision to revoke Mr. Ernesta's license. The Commission recalls that it was Police Commissioner Pillay who questioned Mr. Ernesta and suggested that he was part of the mercenary attack of 1981, and further recalls that the Commissioner of Police answered to the President. The Commission also recalls the evidence it has received in other cases that the President had ultimate authority over all appointments, promotions, and dismissals in the public service,[19] and considers that this power also effectively extended to political influence over decisions of the SLA. As Mr. René was acting in his official capacity at the material time, the Commission finds that his responsibility can be attributed to the State.

53. Therefore, the Commission determines that Mr. Ernesta suffered the violation of abuse of office under the TRNUC Act, in violation of his human rights.

ii. Wrongful Denial of the Right to Employment

54. On the evidence presented, the Commission is satisfied on the balance of probabilities that Mr. Ernesta also suffered the violation of the wrongful denial of his right to employment under Section 2(8)(i) of the TRNUC Act.[20] That violation consists of the 1) repeated refusal to hire, promote, otherwise interfere with or refuse a person 2) in pursuit of employment in that person's chosen field, 3) for reasons other than business necessity or some other reasonable and articulable basis 4) by a perpetrator. As with the violation of wrongful termination, this violation applies equally to dismissal of employment from either the public or private sector and is a fundamental violation of an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".[21]

55. The Commission finds it to be established on the evidence adduced that Mr. Ernesta had his taxi licence wrongfully revoked by the SLA, a clear interference in Mr. Ernesta's choice of employment. Further, the Commission finds that he was more likely than not denied other opportunities by the Government through the denial of security clearance, which required Government approval.[22] The Commission finds for purposes of the second element that his chosen field was primarily as a taxi operator, and

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

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

[21] UDHR, art. 23(1). The Commission also notes the Declaration of Philadelphia, which reinforces this right, guaranteeing individuals "the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". Int'l Labour Organisation [ILO], Int'l Labour Conference, 26th, *Declaration of Philadelphia*, art. 2(a), May 10 1944.

[22] The Commission recognises that Mr. Ernesta did not reapply for a taxi licence until the introduction of multi-party politics in 1993, at which point his licence was approved; however, it notes that his decision not to reapply until that time could have been influenced by the tense political climate. Bearing in mind the evidence it has received in many other cases, the Commission accepts that it would have been very difficult for Mr. Ernesta to find any other work in Seychelles following this event, which effectively would have served to mark him as an enemy of the regime and the revolution.

secondarily in the other position in which he attempted to gain employment. Thus, the Commission finds that the first and second elements are satisfied.

56. With regard to the third element, the Commission recalls that Mr. Ernesta's search for employment following the revocation of his taxi licence was consistently unsuccessful due to the fact that he did not have security clearance from the Government. The Commission recalls as above that the denial of security clearance was more likely than not due to the perception of Mr. Ernesta as affiliated with the opposition. Further, this was also due to the baseless perception that he may have been an actor in the 1981 mercenary attempt which threatened the national security of Seychelles. The Commission recalls that in Seychelles, during the period in question, retaliation often occurred on political grounds, including on the basis of real or perceived support of the political opposition. The Commission notes that not only was Mr. Ernesta threatened and accused on a number of occasions of a real or perceived lack of support of the ruling party, but he was subjected to further harassment at the hands of state actors following the revocation of his taxi licence. Mr. Ernesta suffered physical violence at the Happy Youth Club when Mr. Didier Amblavany struck him in the face, breaking his glasses. On that same night, Mr. Ernesta was followed home and intimidated by Mr. Phillipe Lucas, driving at speed and honking his horn behind Mr. Ernesta's car. The Commission accepts that Mr. Amblavany and Mr. Lucas were known associates and that Mr. Lucas was a military officer in Albert René's Government and therefore sufficiently connected to the State. The Commission also notes that on one occasion, Mr. Ernesta was accosted by Mr. Lucas while in his car and questioned directly about his real or perceived support for the former President Mancham. As such, the Commission finds that the third element has been made out.

57. Turning to the perpetrator element, the Commission accepts that Mr. Ernesta's licence was revoked by the SLA, which existed in Seychelles as an organ of the State. The Commission further accepts that the SLA was under the command of the Chairman, who was also the Minister for Defence, Mr. Ogilvy Berlouis, as well as the Commissioner of Police and the Principal Secretary of Transport. The Commission moreover recalls the evidence it has received that the SLA was susceptible to Executive interference, in line with the policy and practice at the time of the President having final authority as to all decisions to appoint, terminate, or promote individuals within the public service as recounted above. As such, the Commission finds that Mr. René again bears primary responsibility for this denial of Mr. Ernesta's rights. The Commission finds that by virtue of its nature as a State entity and involvement by various State actors, decisions taken by the SLA to revoke or refuse to approve an application for a licence were attributable to the State.

58. Therefore, the Commission finds that Mr. Ernesta suffered the violation of wrongful denial of the right to employment under the TRNUC Act, in further contravention of his human rights.

## 2. Other Acts of a Similar Character Causing Suffering

59. The Commission next recalls Mr. Ernesta's claim of being subjected to acts of intimidation, threats, and victimisation by supporters of the Government both prior to his forced self-exile, as well as during the time he returned to Seychelles from the United Kingdom. The Commission characterises these allegations as the violation of other acts of a similar character causing suffering, or injury to body or to mental or physical health under Section 2(8)(m) of the TRNUC Act.[23]

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

60. The Commission considers that the violation of "other acts" is a catch-all provision intended to include any other conduct not immediately defined or covered by the other offences enumerated in the TRNUC Act, and generally contemplates a human rights violation of sufficient significance as to warrant redress. It generally requires 1) the infliction of suffering or injury to body or to mental or physical health, 2) by a perpetrator. The conduct must be sufficiently grave or severe so as to be a cognisable violation of comparable magnitude to the other violations in the Act, such as victimisation by the State that causes physical, mental, economic, or other damage.[24]

61. Starting with the admissibility nexus of this violation to the Coup d'état of 1977, the Commission notes that the present alleged events occurred during its primary temporal mandate during the time of the one-party State, roughly from 1977 to 1993. The Commission further recalls, as noted above, that Mr. Ernesta was more likely than not seen as an enemy of the revolution from the time of the revocation of his taxi licence and questioning by the Police Commissioner as to his political affiliations and possible involvement in the 1981 mercenary attempt. As such, the Commission finds that both its temporal and thematic mandates are sufficiently met to render the claim admissible before it.

62. Regarding the first element, the Commission notes Mr. Ernesta's recollection of being subjected to physical violence at the Happy Youth Club, as well as the incident subsequently involving a dangerous car chase which apparently caused Mr. Ernesta to fear for his life. Mr. Ernesta further stated that he was also accosted while sitting in his own car, and detained in a police station for six hours without cause. The Commission accepts that while some mental trauma could result from incidents such as those described, it is not satisfied on the balance of probabilities that the events complained of here rise to the level of severity of the other violations under its mandate. In that regard, the Commission recalls it has found in other cases that shootings, grave injuries, and acts almost amounting to torture have constituted "other acts", whereas here Mr. Ernesta sustained a punch to the face, breaking his glasses, and a potentially stressful car chase. The Commission highlights that it has not received any evidence of severe suffering or injury due to either of these events, such as medical or psychological records or detailed allegations of the consequences of these actions to Mr. Ernesta's life. As such, the Commission finds that the first element has not been established.

63. As not all the elements of the violation have been established to a balance of probabilities, the Commission finds that Mr. Ernesta did not suffer the violation of other acts with regard to the events in question.

## 3. Forced Exile

64. The Commission finds that Mr. Ernesta was forced to go into exile in the United Kingdom, and then again in Canada, for a total period of 15 months due to the consistent threat to his safety that residing in Seychelles presented, amounting to the violation of forced exile under Section 2(8)(k) of the TRNUC Act.[25]

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[24] *See* UDHR, arts. 3 (right to life), 4 (prohibition of slavery), 5 (freedom from torture), 7 (equal protection), 12 (protection from arbitrary interference and attacks upon honour and reputation).
[25] TRNUC Act, sec. 2(8)(k).

65. The Commission finds that again, this claim is admissible before it as satisfying both its temporal and thematic mandates. The Commission recalls that Mr. Ernesta fled Seychelles in 1987, during the time of the one-party State, and further that he fled following episodes of victimisation by Government actors as recounted above. As such, the admissibility nexus to the Coup is satisfied.

66. The Commission has considered that forced exile involves 1) the expulsion, deprivation of access to re-enter, or removal of a national from his or her country 2) unlawfully or arbitrarily through either direct deportation or expulsion or by making living conditions unbearable for the national to stay in the country due to ongoing or potential persecution, victimisation, violence, or other difficulties, 3) by a perpetrator.[26]

67. First, the Commission finds that Mr. Ernesta first left for the UK in 1987, but then returned to Seychelles after three months as he "could not adapt to life" in the UK. The Commission also recalls Mr. Ernesta's evidence that even though he felt his life was at risk in Seychelles, he loved his country and wanted to return. The Commission finds that no sufficient period of forced exile has been established with regard to Mr. Ernesta's time in the UK on the basis of the brevity of his time spent there and apparent lack of seriousness of the need to leave Seychelles.

68. The Commission next recalls that Mr. Ernesta left Seychelles again in August 1987, this time to Canada, where he stayed for one year and three weeks. This was following an unsuccessful search for employment and continuous intimidation and threats by supporters of the Government of Albert René, including by Mr. Lucas in a car with the number 232 and by an unidentified man from North East Point in the infamous car 1122. The Commission recalls that Mr. Ernesta stated that things were "extremely difficult" for his family at that time, including his four children, the eldest of whom was 10 years old and the youngest just four years old. The Commission notes that Mr. Ernesta made this decision despite having recently returned, due to difficulty adapting to another foreign country, further supporting the serious risk perceived by Mr. Ernesta. Here, the Commission finds Mr. Ernesta's time spent away from Seychelles, and his motivation for leaving, to be sufficient to satisfy the first element.[27] The Commission accepts that Mr. Ernesta intended to exile and to stay away from Seychelles indefinitely at that point, until it was safe to return.[28]

69. In consideration of the second element, the Commission recalls that article 9 of the UDHR ensures that "no one shall be subjected to arbitrary arrest, detention or exile".[29] The Commission recalls that Mr. Ernesta was subjected to harassment and intimidation when he returned to Seychelles from the United Kingdom, and it recognises that the threat to Mr. Ernesta's safety in Seychelles was evidently real and present, such that he felt his life would be at risk should he remain. In order to mitigate this risk to his safety, Mr. Ernesta left Seychelles again with his family, evidently with the intention to remain away

[26] The violation of forced exile is fundamentally a violation of the customary rights freedom of movement and to re-enter one's country. *See* UDHR, arts. 9 (freedom from arbitrary exile), 13 (freedom of movement and right to return to one's country).

[27] In this regard, the Commission notes that for the exile to occur, the individual or family in question must have physically left Seychelles for a sufficient period of time that they either do not intend to return or they have the ability or expectation to live in the destination country. The period of time required will depend on a weighing of evidence in each case.

[28] The Commission notes that it took a call from Mr. Marie, a bodyguard of President René, to tell Mr. Ernesta that he was safe to return to Seychelles, in order for him to return to the country.

[29] UDHR, art. 9.

indefinitely. The Commission recalls Mr. Ernesta's decision to sell one of the properties he owned before going into exile in Canada as indicative of this intention. As the harassment and victimisation Mr. Ernesta suffered was evidently on the basis of his real or perceived political beliefs, and thus likely tied to the foregoing employment violations, the Commission is satisfied that living conditions in Seychelles were made unbearable for Mr. Ernesta, prompting him to leave.

70. Regarding the perpetrator prong, despite Mr. Marie's evidence that President René might not even have known that Mr. Ernesta left or returned to Seychelles at the time of his exile, the Commission finds that as it has found Mr. René to bear responsibility for the above employment violations, which it has also found served to mark Mr. Ernesta as an enemy of the State, all foreseeable consequences of those violations, including victimisation by other Government actors, can similarly be attributed to Mr. René. As such, the Commission accords Mr. René perpetrator status.

71. As Mr. René, and the various other Government actors whose actions spurred Mr. Ernesta to flee Seychelles, were acting in their official capacities at the time in question, the Commission finds that responsibility can be attributed to the State for this violation of Mr. Ernesta's human rights.

72. Based on the aforementioned reasons, the Commission is satisfied that Mr. Ernesta suffered the violation of forced exile, in violation of his fundamental human rights.

## 4. Abuse of Office by a Government Official

73. Finally, the Commission recalls Mr. Ernesta's evidence that he suffered an abuse of office, under Section 2(8)(l) of the TRNUC Act,[30] with regard to the refusal to accord planning permission for a property he had purchased after living in exile.

74. With regard to the required admissibility nexus of this violation to the Coup d'état of 1977, the Commission is satisfied that this link has been established. In that regard, the Commission recalls that while this violation was alleged to have occurred in 1994, following the so-called return of multiparty democracy and the time of the one-party State, the Commission has found that admissible violations still occurred following the entry into force of the 1993 Constitution. In this regard, the Commission recalls the evidence from previous cases that access to Government services was often granted or denied on the basis of party affiliation even after the change in 1993. The Commission recalls Mr. Ernesta's claim was that his denial of planning permission and purchase of property were based on the fact he was not affiliated with the Government. As such, the Commission finds its thematic mandate to have been satisfied.

75. As above, 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 the official's position 4) by a State official.[31]

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[30] TRNUC Act, sec. 2(8)(l).

[31] *See supra* n. 13 and accompanying text.

76. The Commission notes that the alleged acts involved the Government departments of the Planning Authority and the purchase of land was coordinated by the Ministry of National Development. As such, both allegations involved the use of powers of the public office, in satisfaction of the first element.

77. The Commission turns to the second element, whether a specific right or freedom of Mr. Ernesta and his daughter had been restricted. The Commission notes the deep-seated patronage system in place at the time, where if a family or individual was considered to be in favour of the Government, they would be assisted by the State as best they could to allow that family or individual benefits above those that were due to them at law. The Commission, however, finds it important to distinguish the rights of an individual due at law against the benefits above and beyond those that may have been accorded to those who supported or were affiliated with the party. Where an individual claims they were victimised on the basis of the denial of the rights supporters were given beyond what was due at law, the Commission is unable to quantify said denial of potential benefits as a violation.

78. The Commission notes in this regard that there is no human right to receive planning approval, even if a plan had already been prepared and perhaps seemed as if it would be approved. In this regard, the Commission notes there was no inherent right to receive planning permission, and insufficient evidence that the event complained of was done on an arbitrary or politically discriminatory basis, and thus the second element, that a right or freedom had been restricted by the decision, has not been made out.

79. As regards the application to purchase a plot of land, the Commission finds that neither Mr. Ernesta nor his daughter had an inherent right in law to purchase the property, and thus no right or freedom of theirs has been restricted in the denial of the purchase either. As the second element has not been made out for this claim either, the Commission declines to consider the remaining elements of the violation.

80. Therefore, the Commission is not able to find that Mr. Ernesta suffered the violation of abuse of office by a Government official under the TRNUC Act with reference to the alleged refusal to accord him the planning permissions sought.

## V. RECOMMENDATIONS ON REPARATIONS

81. In light of the foregoing, the Commission recommends reparations in accordance with the Commission Reparations Policy.

## VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

82. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 059.

83. 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**

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**The Commission**

**Gabrielle McIntyre, Chairperson** G. McIntyre

**Michael Green, Vice Chairperson**

**Marie-Therese Purvis, Commissioner**

**Jacques Koui Gbilimou, Commissioner**

**Archbishop James Wong, Commissioner**