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Case No.: 063

The Truth, Reconciliation and National Unity Commission

In the Complaint of the André Barallon

31 December 2022

Determination on the Complaint of the André Barallon

Complainant:

André Barallon

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. Andre Barallon who brings his complaint as a victim was filed on 26 September 2019. Consequently, Mr. Barallon'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 his complaint, Mr. Barallon alleges that he was arrested and incarcerated for over seven months at Long Island prison without charge in 1985. Mr. Barallon claims that following his release from prison, his employment was wrongfully terminated and he was subject to harassment on political grounds resulting in his forced exile to the United Kingdom.

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

II. PROCEDURAL HISTORY

7. Satisfied that the complaint of Mr. Barallon prima facie alleged violations related to the coup d'état of 1977, the Commission rendered his complaint admissible on 28 January 2020.

8. On 13 October 2020, the Commission began hearing evidence in the case of Mr. Barallon. The Commission heard two witnesses[2] and also sought access to documentary evidence relevant to his complaint.

III. EVIDENCE RECEIVED

A. Background Information and Wrongful Termination

9. Mr. Barallon appeared before the Commission on 13 October 2020 to present his evidence before it in closed session,[3] and then appeared again in public session on 22 September 2021.[4] He informed the Commission that he was born in English River and that his family were always democratic supporters and "very anti-Albert René".

10. Mr. Barallon was employed at Union Lighterage Company ("ULC"), where he worked with some colleagues who were also members of the Seychelles People's Militia.[5] They told him that he should not be employed by ULC because he was a democrat. While employed at ULC, Mr. Barallon worked at the New Port and was responsible for inspecting all the cargo from abroad. Mr. Barallon informed the Commission that Mr. Gérard Hoarau[6] sent leaflets done by the Seychelles National Movement (a.k.a. Mouvement Pour la Resistance[7]) from South Africa to Seychelles using shipping vessels, and that all communications came by sea. Mr. Barallon passed the leaflets on to other people. One day, Mr. Barallon was at New Port when Mr. Medaris Mussard (deceased), a militia security guard, approached him. Mr. Mussard told Mr. Barallon that he was going to escort him outside as he was no longer working for ULC; Mr. Barallon was not permitted to take anything with him when he left. Mr. Mussard told Mr. Barallon that he should stop taking things from the MPR in South Africa, and escorted him off the ULC premises.

11. Mr. Barallon claimed that he wrote to ULC asking for the basis for his dismissal, but received no response. Thereafter, he applied for numerous jobs, but was unsuccessful. Mr. Barallon added that there existed no avenue to enquire about why one could not obtain employment in 1985. Mr. Barallon then continued to circulate MPR leaflets. On 18 May 1985, alongside other persons, he made a pamphlet with the heading "Wanted Dead or Alive - Albert René for Killing Seychellois" and circulated it.

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[2] Joseph Leon, Hearing No.157 of Thursday 20 May 2021; and Bernard Georges, Hearing No.158 of Friday 21 May 2021.
[3] Hearing No. 115 of Tuesday, 13 October 2020.
[4] Hearing No. 205 of Wednesday, 22 September 2021.
[5] See SPDF SPLA Army Structure Report
[6] Gérard Hoarau was the opposition leader of MPR and was in exile in the United Kingdom. *See* Case Determination No. 029: Joe Hoarau.
[7] The Commission notes that the MPR bore its acronym from the former Mouvement Pour la Résistance, which later became the Seychelles National Party (SNP).

B. Arrest and Detention

12. Two days prior to his arrest, Mr. Barallon distributed MPR papers at the US Tracking Station with another person. He stated that they were asking for help from the United States. On the day of his arrest, Mr. Barallon recalled that he distributed the pamphlets at Anse Aux Pins and Anse Royale. Mr. Barallon stated he was arrested at Anse Royale and taken to the Central Police Station. Five other persons were also arrested with him; they were detained for three weeks at Central Police Station. John Pillay was also arrested and brought to the Central Police Station, at some point but was released after two or three weeks. Six detainees, including Mr. Barallon, were subsequently taken to Long Island Prison, where they saw Mr. Jean Dingwall, also detained. Mr. Barallon stated that one week later, Mr. Joachim and Mr. Robin Sullivan were also arrested and detained at Long Island Prison.

13. Mr. Barallon recalled that while detained, they were all given prison food: bread and tea in the morning and boiled fish for other meals. They were also given two bottles of water to wash with and a bucket which served as a toilet in their cell. Each cell was 3 x 5 feet, made of concrete, and was equipped with a small mattress about 1.5 feet long, made of coconut fibre. There was no opportunity to exercise, and the only time they were permitted to get out of their cells was to wash and empty their toilet buckets. Mr. Barallon advised the Commission that since the water provided was insufficient to wash in, he and Mr. Joe Leon would pool their water and shower on alternate days. He recalled that the lights in their cells were left on 24 hours a day, which made the cell hot, and Mr. Barallon would often wake up sweating. The detainees spoke to each other through their cell bars.

14. Mr. Barallon recalled that he was charged, along with the five other co-accused detainees, with endangering the life of the President, and was taken to court on 2 October 1985. Mr. Barallon advised the Commission that he did not have a clear recollection of the events, but stated that Mr. Seaton, who was the Chief Justice, laughed when the charges were read aloud. Mr. Barallon noted that while he had been detained from 18 May 1985, he was only charged on 2 October 1985.

15. Mr. Bernard Georges was Mr. Barallon's lawyer, and he also represented the other detainees who were charged with endangering the life of the President. Mr. Barallon stated that he did not understand the court proceedings but that they pleaded guilty. He recalled that they were told that if they pleaded guilty to one count and not guilty to the other, they would get a lesser sentence. Mr. Barallon and his co-accused pleaded guilty to one count and four of them, including Mr. Barallon, were told they were free. Mr. Barallon remembered feeling relieved. The court sentenced Mr. Leon and Mr. Guy Agathe to one year imprisonment because they had previous convictions. In spite of the judge's orders, Mr. Barallon and other co-accused officers were told by the court officers that they would be taken back to Long Island Prison. They were all subsequently placed back in their jail cells. At the time, Mr. Barallon received a message that his father had cancer and did not have long to live. Mr. Barallon began to worry that he would not be released in time.

16. When Mr. Barallon returned from his court session, Mr. Dingwall asked him what had happened. Mr. Dingwall's cell was on the other side of Mr. Barallon's. They were not able to see each other but they could talk. Mr. Dingwall told him: "My friend these four walls that you see, they are your friends from now on. Be careful of the people close to you. Even I do not trust anyone". Mr. Dingwall told Mr.

Barallon that dates no longer existed. Mr. Barallon believed that Mr. Dingwall was imprisoned for around 18 months.

17. One day, Mr. Barallon was summoned to the office of the Superintendent of Prisons, Mr. Dogley. He was handcuffed even though it was only a 20-step walk from his cell. At the office, Mr. Dogley told Mr. Barallon that he received the news that his father had passed away. Mr. Barallon broke down and asked to attend the funeral, but Mr. Dogley refused. When Mr. Barallon returned to his cell, other prisoners told him that he should be allowed to go to the funeral because prisoners were allowed to do so. Three days later, on 18 October 1985, the prison authorities told Mr. Barallon that they were taking him to see his father, and he was subsequently taken in handcuffs to see his father's body. Mr. Barallon did not want to say goodbye to his father while wearing handcuffs, and asked for them to be removed. The warden refused, and ordered Mr. Barallon not to remove them. Mr. Barallon found it disrespectful to go by his father's casket wearing handcuffs, and resorted to sitting and speaking to his mother and sister, who had come from South Africa. Mr. Barallon asked for forgiveness from his mother for not saying goodbye by his father's casket. Mr. Barallon was deeply affected by this event.

18. Mr. Barallon was not permitted to attend the funeral service at the cemetery. His protests and negotiations initiated by others present were unsuccessful. Mr. Barallon was distraught for disappointing his family, especially his father. After about half an hour, he was taken back to the prison, where he asked for Mr. Dogley's permission to attend the funeral. He recalled that at the time, Ms. Percy-Tirant spoke to Mr. Adler, who provided authorisation for Mr. Barallon to attend the funeral, but Mr. Dogley denied the request. Mr. Barallon stated before the Commission that he wishes to know why this was the case.

19. Mr. Barallon recalled that he, Mr. Bernard Racombo, and the brothers Mr. Allain Tirant and Mr. Guy Tirant were taken to State House. The Tirants were taken to see Mr. Rolly Marie, the Head of Security, after which they came out smiling, waved at Mr. Barallon and Mr. Racombo, and left. Mr. Rolly then called Mr. Racombo, who went into his office. Defence Minister Ogilvy Berlouis subsequently came out of the office and asked whether "you are Barallon", to which Mr. Barallon responded in the affirmative. Mr. Berlouis told Mr. Barallon: "Things are not good. I do not know what you have done but Mr. René does not want to see you at all". Mr. Berlouis then tapped Mr. Barallon on the shoulder and told him: "Let's talk, what happened, why did you do these papers?" Mr. Barallon immediately thought that someone had told Mr. Berlouis that he had made the "Wanted Dead or Alive" pamphlet with the picture of President René. Mr. Barallon told Mr. Berlouis that he and the Tirant brothers were distributing the pamphlets.

20. Mr. Berlouis summoned Mr. Barallon into the office and told him that the Tirant brothers had agreed to work with the State; Mr. Racombo was not mentioned. Mr. Berlouis then told Mr. Barallon that he had learnt about Mr. Barallon and his family, and asked what his relationship was with the Sullivans. Mr. Barallon responded that they were family friends and that they grew up together like cousins, although they were not related by blood. Mr. Berlouis told Mr. Barallon that President René did not want to see him on his land (Seychelles) at all, and that if he wanted to join with them in their society, Mr. Barallon would "have to change". He added that he had some work for Mr. Barallon and that in return he would get, among other things, a house, a car, and a boat. Mr. Barallon was asked to think about the proposition and told that Mr. Berlouis wanted to see him immediately after his release from Long Island Prison. Mr. Berlouis added that he would get Mr. Barallon and the other co-accused released.

21. When Mr. Barallon left State House, he thought that Mr. Racombo and the Tirant brothers had been released, but he saw them when he returned to Long Island Prison. Approximately one week later, they were all released. Mr. Barallon advised the Commission that his fellow detainees' acceptance of the Government's offer eroded his trust in them. The day of Mr. Barallon's release, Mr. Barallon received a call from Mr. Berlouis asking him to come to State House. There, Mr. Berlouis asked Mr. Barallon whether he had considered his job offer to work for him, and then told him that Mr. René wanted to destroy his family and the Sullivan family at Beau Vallon. Mr. Berlouis wanted Mr. Barallon to meet someone who would give him a package to leave at the Sullivans'. Mr. Barallon told Mr. Berlouis that he would let him know, and later spoke to the person Mr. Berlouis had mentioned and informed him what Mr. Berlouis had told him. This person then went back to Mr. Berlouis and reported what Mr. Barallon was thinking about the request. One morning, State House called and asked his mother to tell Mr. Barallon to go to State House. Mr. Barallon explained what had transpired, to which his mother responded that it was a ploy to send Mr. Barallon's aunt to prison. Mr. Barallon asked his mother not to disclose any information to the Sullivans.

22. Mr. Barallon did not go to State House as requested and instead left St. Louis. He was near a church when he saw a car with plate S1122 stopping behind him slowly. Two persons, one of which Mr. Barallon recognised as Mr. Joachim Antoine, alighted the car and took hold of him by the neck and his shirt. Mr. Barallon did not recognise the other person. He heard something fall, which sounded like a gun, and managed to escape their grip and hide in the church. They came and looked for him, but then returned to their car. Mr. Barallon recalled that it was 11 P.M. when Mr. Barallon went through English River to his house, and he sat on the veranda, shaking. He said he was very lucky to have escaped.

23. Mr. Barallon informed the Commission that because he did not do what they wanted him to do, he believed that the Government thought he would tell other people, and that would not be good for them. At the time, Mr. Barallon was 19 to 21 years of age. He said he could not go out at night. He was the only child of eight children that was still at home. The rest of his siblings were abroad, so it was just he and his mother at their house.

24. Mr. Barallon advised the Commission of another incidence of surveillance involving car S1122. One day at approximately 10:30 P.M., Mr. Barallon was waiting for the bus near Anse Etoile Police Station, when he saw Mr. Joachim Antoine in the car. Mr. Antoine stopped near the police station and then came back towards him. Mr. Barallon started walking towards English River from the police station, where the car followed him, stopped, and subsequently turned the lights off. Mr. Barallon then ran towards the sea, and walked from FEBA in the mud. He stated that he ran all the way, and dogs ran after him, and he jumped into the mud until he arrived at the English River Club. When he arrived there, he saw car S1122 going up and down at Radio Seychelles. He came out near the disco, and ran home. When he arrived, his mother asked him why he was covered in mud, and he told her he had fallen in the mud.

25. Mr. Barallon received a few calls from State House asking him to see Mr. Berlouis. Once, Mr. Barallon's mother picked up the phone and he overheard her telling the caller that "he will not do what you want him to do". Mr. Barallon told his mother not to get involved.

26. Mr. Barallon recalled that nobody came to see him after he was released from prison. People were scared of him; they crossed the road to avoid him on the street and did not speak to him. He was also unemployed. He could not trust anyone, and he experienced a lot of anger and frustration. Mr. Barallon's uncle, who married Claude Vidot's sister,[8] told him that he had shamed the Barallon family and to never came back to their home again. He further noted that the son of the Commissioner of Police, John Pillay, had asked Mr. Barallon's wife to lend him 500 pounds, and when Mr. Barallon asked Mr. Pillay for the return of the money, Mr. Pillay would just dodge and cross the road. He stated that all trust was broken. Mr. Barallon informed the Commission that the ostracisation by friends and family hurt him more than President René imprisoning him.

C. Mr. Barallon's Departure from Seychelles

27. Mr. Barallon recalled that his sister in South Africa called him regarding an opportunity to leave Seychelles. His sister met a school friend while in Seychelles, and went to lunch with two other South Africans. She apprised them of Mr. Barallon's situation, and one of the men, Mr. Jim O'Boyle, stated that he could obtain Mr. Barallon's release. They exchanged telephone numbers and Mr. O'Boyle called Mr. Barallon's sister after her return to South Africa, advising her to ask Mr. Barallon to leave the Seychelles immediately after his release from prison. It was later discovered that "Jim O'Boyle" was an alias used by a person named Barry Trigwell, who was an investigator for President Albert René. Mr. Trigwell later married Mr. Barallon's sister.

28. Mr. Barallon recalled receiving a telegram from his sister instructing him to go to Barclays Bank. She sent money from her account so that he could leave Seychelles. Mr. Barallon also had a brother in Germany, and he contacted the German Ambassador. He recalled that he was able to leave Seychelles within one week of that correspondence. Mr. Barallon stated that he did not want to leave his mother, but he had to. On 17 January 1986, he arrived at the airport, where he saw Joachim Antoine and another man of smaller stature. They asked him where he was going, and took him inside a room to search him and asked to see all of his documents and papers. They saw Mr. Barallon's court summons, and they cut his coat on the inside to make sure that nothing was concealed. They even ripped the hems of the pants he was wearing. Mr. Barallon showed them his papers and asked why they were searching that way. He stated that he had had only 20 dollars with him.

29. Mr. Barallon then arrived in Germany and stayed for three weeks, but could not adapt to the weather or the language. He decided to go to England, and requested political asylum, but was hand-cuffed and told to return to Germany. The English authorities granted Mr. Barallon asylum after he showed them records of judicial proceedings against him and explained why he went to Germany. While in the United Kingdom, Mr. Barallon met with Mr. Jim O'Boyle, who told Mr. Barallon that he was doing investigative work for President René there. He also shared that he was simultaneously working for the MPR. Mr. O'Boyle knew that Mr. Barallon did not have money. In 1987, Mr. O'Boyle gave Mr. Barallon 500 pounds and told him that none of the money could go to MPR, and that it should be used for his own benefit. Following this advice, Mr. Barallon went to live in Wales, and never became a member of MPR. Mr. Barallon stated that for him, when Gérard Hoarau was killed, "it was all over". Mr. Barallon said that apparently Mr. O'Boyle did not know anything about Mr. Hoareau's death. He stated that Mr. O'Boyle had worked together with Ian Withers, and then they had an issue with each other.

[8] The Commission notes that Claude Vidot was one of the Coup participants and a senior army official.

30. Mr. Barallon stated that one day, he was sitting with a Seychellois who had left the country in 1978 and never returned. The man told Mr. Barallon that he would be very happy to know where all the MPR donations went, the SNP donations, where it had all gone.

31. Mr. Barallon advised the Commission that he was an activist but he did not kill people. He said that the extent of his activism was producing the pamphlet about President René. Mr. Barallon noted that the he kept his word to his mother and never disclosed to the Sullivans that which he was asked to do.

32. Mr. Barallon came back to Seychelles in 1991 with his two children for three weeks. He stated that during that time, he never felt safe to go out, and opted to stay home as he knew some people still wanted to kill him. Mr. Barallon stated he was also afraid to give his evidence before the Commission in 2020. Mr. Barallon stated that he never told his 29-year-old son what had occurred in Seychelles. Mr. Barallon said that at 19 years old, his son had found an Amnesty International report on him when he conducted an Internet search. Mr. Barallon advised the Commission that his son asked him the reason why he did not visit his father's grave while in Seychelles, and he reiterated his experience and anguish. Mr. Barallon advised the Commission that his experiences had completely eroded his ability to trust people.

D. Documentary Evidence

33. Mr. Barallon provided the Commission with a copy of the formal charge against him and the other detainees, dated 2 October 1985. It read as follows:

The Republic
versus
1. Andre Barallon Of Castor Road2.
2. Allain Tirant of Anse Louis
3. Guy Agathe of Bel Air
4. Bernard Racombo of Petit Paris
5. Guy Tirant of Anse Louis
6. Joseph Leon of Button Lane

Andre Barallon & Ors
is charged with the following offence (or offences): -

Count 1

Statement of Offence

Doing an act, indicating or implying that it might be desirable to do any other act, which is calculated to bring death to any person; contrary to Section 89(A)(1)(a) of the Penal Code, Cap.73.

Particulars of offence

Andre Barallon, Allain Tirant, Guy Agathe, Bernard Racombo, Guy Tirant and Joseph Leon on the 18th day of May, 1985, at Anse Aux Pins, Mahe, did without lawful excuse an act namely distributed leaflets containing the statement "wanted dead or alive Albert René for killing Seychellois" which leaflets indicate or imply that it might be desirable to do any acts, namely to kill the said Albert René and the said act was calculated to bring about the death of the said Albert René.

Count II

Statement of offence

Distribution of seditious publications: contrary to section 55 (1)(c) of the Penal Code. Cap.73

Particulars of offence

Andre Barallon, Allain Tirant, Guy Agathe, Bernard Racombo, Guy Tirant and Joseph Leon on the 18th day of May, 1985, at Anse Aux Pins, Mahe, did distribute seditious publications namely publications containing the words "wanted dead or alive Albert René for killing Seychellois'.
Dated this 2nd day of October in the year one thousand nine hundred and eighty-five.

34. Mr. Barallon also provided the Commission with a copy of the summons to appear to answer the charges on 29 October 1985 at 10.30am.

35. On 3 June 2020, the Commission sought access through the Superintendent of Prisons to all prison records held in relation to Mr. Barallon. It received no response, and so repeated its request on 23 July 2020, 7 October 2020, and 25 February 2021. All requests were met with no response.

36. On 5 February 2021, the Commission sought access to the police records held with respect to Mr. Barallon. On 23 February 2021, it was provided with a letter confirming that Mr. Barallon was convicted on 6 November 1985 for distribution of seditious publication. He was sentenced to one year of imprisonment which was suspended for two years.

37. On 30 July 2020, the Commission sought access to the record of the proceedings against Mr. Barallon from the Supreme Court Registrar. The Commission received no response to this, or to its subsequent requests on 5 December 2020, 22 December 2020, 2 February 2021, and 5 February 2021.

38. The Commission also accessed the 1986 Amnesty International Report, which in relevant part provided as follows:

> Nine other prisoners of conscience were among a group of some 20 people detained in May and June for possessing or distributing literature criticizing the government. All but nine of those detained were soon released but three, two of whom were brothers, Joachim and Robin Sullivan, were still untried at the end of 1985. Two other people were sentenced to a year's imprisonment in November but were released in December after remission for good conduct. Another four people were sentenced to suspended terms of imprisonment by the Supreme Court in a separate hearing in November but were not released until the next month. They included Andre Barallon, a stevedore, and Bernard Racombo, a former police officer.

E. Witness Evidence

1. Mr. Joseph Leon

39. The Commission called Joseph Leon, who appeared before the Commission on 20 May 2021.[9] Mr. Leon confirmed that he was with Mr. Barallon when they were distributing papers against the Government and were stopped by two or three jeeps of PMU members, who searched their pickup. Mr. Leon stated that at that time, they had already thrown out of all the papers and the last lot had been left at the airport. Mr. Leon recalled that the papers had stated that they wanted a democracy and a few had a picture with half the face of Albert René and half a mermaid and had the slogan "wanted Albert René, dead or alive". Mr. Leon recalled that when the PMU had stopped their pick-up he had been

[9] Hearing No. 157 of Thursday, 20 May 2021.

able to run away while the other five people he was with, including Mr. Barallon were taken to Central Police Station.

40. Mr. Leon recalled that it was one to two hours later when the police came and arrested him at a place that sold "Baka". Mr. Leon recalled that the police told him that they knew that he had run away from the police earlier and now he was being arrested. Mr. Leon stated that he was placed in the PMU jeep and once they reached the PMU Headquarters, they stopped the jeep and Mr. Kilindo, who was in charge of PMU, pulled Mr. Leon out of the jeep and said "even you want to take over the country, a stupid man like you", and then Mr. Kilindo hit Mr. Leon on the shoulder with his gun and then ordered him back in the jeep, to take him to Central Police Station.

41. Mr. Leon informed the Commission that once at Central Police Station, he saw his five colleagues in cells and he was also placed in a cell and left there for 10 to 12 hours. Mr. Leon stated that the next day he was taken to see the Commissioner of Police and that the Commissioner was seeing them all one by one. Mr. Leon stated that when he was taken before Commissioner Fontaine, he was questioned as to what he was asking of the Government and Mr. Leon responded that he was asking nothing and that he was just a simple family man. Mr. Leon recalled that the Commissioner was playing with his revolver as he questioned Mr. Leon and the Commissioner told Mr. Leon that "this Government that you are playing with, will not end well". Further, the Commissioner asked Mr. Leon whether he was looking to be hurt and then ordered that Mr. Leon be placed back in the cell.

42. Mr. Leon stated that two to three days later, John Pillay was arrested and held at the Central Police Station in a cell for a week to eight days. Mr. Leon recalled that Mr. Pillay told Mr. Leon and the others being held with him, that Mr. Pillay was leaving for the United Kingdom and he would look for asylum for them when he was in the United Kingdom. Mr. Leon recalled that once Mr. Pillay was released from jail, Mr. Pillay immediately left for the United Kingdom and reassured them when he left that he would try to get them asylum.

43. Mr. Leon informed the Commission that they were held at the Central Police Station for six to seven weeks, without ever being taken to court and their relatives came to the Police Station to bring them clothes. After that, they were taken to Long Island Prison and detained there, where they were fed substandard food, only permitted to exercise for 30 minutes a day, and given two bottles of water to bathe with.

44. Mr. Leon recalled that at one point, Mr. Barallon went on a hunger strike for four to five days and was taken to hospital and put on a drip. When Mr. Barallon returned to the prison, Mr. Leon told him not to do it again and whatever they were given to eat, they would have to eat it and that it was what they did.

45. Mr. Leon informed the Commission that one day some of the people from the prison were taken to work on Mahé and when they returned, Mr. Leon heard a man called Mathiot say that Mr. Barallon's father had died. Mr. Leon claimed the authorities knew that Mr. Barallon's father was not well but did not tell Mr. Barallon anything and it was Mr. Leon that went to tell Mr. Barallon that his father had passed. Mr. Leon recalled that the news really hurt Mr. Barallon, stating "it hit him hard".

46. Mr. Leon recalled that the Sullivan brothers had been brought to the prison and they were related to Mr. Barallon. Mr. Leon stated that at the last moment, the authorities decided to charge the brothers

with distributing leaflets, and that Mr. Bernard Georges was their lawyer. Mr. Leon recalled that when they went to Court Mr. Leon and Guy Tirant were sentenced to one year in prison and the other four got lighter sentences. After the Court hearing and sentence, they were all sent back to Long Island Prison and then some of them were released in November or December and Mr. Leon was released in January.

47. Mr. Leon stated that once he was released from Long Island he was consistently followed and harassed and was called to State House where he saw Mr. Berlouis, who informed Mr. Leon that there were many allegations against him and Mr. Berlouis asked Mr. Leon what he wanted from the Government. When Mr. Leon said he was looking for a job, he was told by Mr. Berlouis that he would not get one.

48. Mr. Leon informed the Commission that he decided to leave Seychelles and that he sold his car and left on 15 January 1986. When he got to Gatwick Airport, John Pillay came to meet him and he stayed with Mr. Pillay's family. Mr. Pillay assisted Mr. Leon in being granted asylum to stay in the United Kingdom.

2. Mr. Bernard Georges

49. The Commission called Bernard Georges, who appeared before the Commission on 21 May 2021[10] but Mr. Georges was unable to recollect the case of Mr. Barallon given the passage of time and despite best efforts, his inability to locate any file in relation to the matter from which he could have refreshed his memory.

3. Prison Services

50. On 18 March 2020, the Commission sought assistance from the prison service in identifying two prison officers referred to by Mr. Barallon, namely Mr. Dogley and Mr. Adam. On 20 March 2020, that request was acknowledged and the Commission was informed that the prison authorities would check their closed files and revert back to the Commission. On 2 June 2020, having received no further response, the Commission reiterated its request. On 5 June 2020, the Commission was again advised that the prison authorities were trying to locate the relevant files. On 9 September 2020, the Commission followed up on its request, still having received no further communication. On 25 September 2020, the Commission was advised by the Seychelles Prison Service that Mr. Donatien Dogley's personal file had been located but no file was located under the name of Adam.

51. Having obtained Mr. Dogley's file on 5 October 2020, the Commission contacted Mr. Barallon and showed him a photo of Mr. Dogley to ascertain whether this was the prison Superintendent as recalled by Mr. Barallon. Mr. Barallon responded the same day, stating that he did not recognise the person in the photo. He added that the first name of the Superintendent may have been "Leon", although he was not 100% certain.

52. The Commission also contacted Mr. Donatien Dogley via letter on 13 October 2020, requesting his appearance in the case of Mr. Barallon. Mr. Dogley provided a statement to the Commission, dated 10 November 2020. He asserted that he did not know and had never heard of Andre Barallon. He claimed

[10] Hearing No.158 of Friday 21 May 2021.

that he did not work at the prison in 1985 and only worked there from November 2002 until March 2003. He informed the Commission that he believed the person the Commission was looking for was his uncle, Mr. Leon Dogley. He claimed that Leon Dogley was the superintendent of the prison long before Mr. Donatien Dogley worked there and was now deceased.

53. Satisfied from the evidence of Mr. Barallon and Mr. Dogley that Donatien Dogley was not the person concerned, the Commission cancelled his appearance before it. The Commission also obtained a copy of Mr. Leon Dogley's death certificate, which indicated that he passed away on 18 February 2014.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

54. The Truth, Reconciliation and National Unity Commission Act, 2018 ("Act") directs that the Commission shall "abide by universally recognised legal principles and human rights norms" and is "to observe applicable and appropriate rules of natural justice and international fair trial standards".[11] These principles must guide the Commission's determination of whether the conduct alleged constitutes a human rights abuse pursuant to its Act.[12]

55. The reference to "universally recognised legal principles and human rights norms" within section 3(9) of the Act directs the Commission to consider international human rights standards as the substantive applicable law, while the reference to "applicable and appropriate rules of natural justice and international fair trial standards" within section 6(8)(a) of the Act primarily concerns the procedures for the Commission's determinations, particularly where it is determining perpetrator status.[13]

56. The Commission recalls that pursuant to Section 7(b) of the TRNUC Act, in order to achieve its objectives the Commission may "determin[e] the responsibility of individuals in respect of any violations".[14] Any finding of individual responsibility is to a balance of probabilities standard.[15] In that regard, the Commission, underscores that any such determination of individual responsibility is not made in a criminal legal sense, but rather to reveal the truth about events that occurred during or in relation to the Coup d'état of 1977. Thus, the Commission interprets Sections 3(9) and 6(8)(a) of the 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.

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[11] TRNUC Act, secs. 3(9), 6(8)(a).
[12] *Id.*, section 2(8).
[13] Hearing of Attorney-General Frank Ally, TRNUC, 6 July 2020 ("This law is giving you the opportunity for you to fly right over whatever thing had been done by a law, and will tell the Commission, Commission you can make whatever findings that you feel if there was. . . if there are violations of human rights. This was the reason why there have been the Truth, Reconciliation Commissions in those countries. In South Africa also apartheid was legal, it was legal, but it was obvious for the national reconciliation of South Africa that the law that made apartheid legal infringed - it was a gross violation of one's human rights and therefore when it made a finding it did not take it into consideration. So you are not there to take into consideration if a law was a lawful or it was not. You are here to see whether that action taken in relation to that complainant is a violation or not, and when you will define that violation you will have to define it in relation to that definition and that provision which tells you have to look at universal human rights".).
[14] *Id.*, sec. 7(b).
[15] *Id.*, sec. 6(8)(c).

57. The Commission further notes that a person who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any violation and [offering] sincere apologies to the victim or victims".[16] The Commission considers that these provisions, in light of Sections 3(9) and 6(8)(a), provide sufficient protection for the human rights of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

58. 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.

59. 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.

60. 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.

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

B. Approach to the Evidence

[16] 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).

62. 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.

63. 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.

64. 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.

65. 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 Imprisonment or Other Deprivation of Physical Liberty

66. The Commission is satisfied on the balance of probabilities that Mr. Barallon was arrested and detained on 18 May 1985, amounting to the violation of unlawful imprisonment or other deprivation of physical liberty under Section 2(8)(b) of the TRNUC Act.[17]

67. At the outset, the Commission finds that the required admissibility link of the violation to the Coup d'état of 1977 is satisfied.[18] In that regard, it recalls that Mr. Barallon's detention came as a result of an arrest for allegedly distributing seditious materials which were prejudicial to President René and his party. The Commission notes that the violation occurred in 1985, during the primary temporal period of the one-party State. Further, the violation was likely aimed at supressing any anti-government sentiment against the Government that was installed through the Coup d'état. As a result, the Commission finds that both the temporal and thematic mandates are again met.

[17] TRNUC Act, sec. 2(8)(b).
[18] *Id.*, sec. 2(8).

68. The Commission considers that the violation of unlawful imprisonment or other deprivation of physical liberty consists of 1) an arrest, detention, imprisonment, or other deprivation of one's physical liberty 2) executed unlawfully, arbitrarily, or without due process 3) by a perpetrator.[19]

69. In terms of the first element, the Commission is satisfied on the evidence that Mr. Barallon's detention began he was distributing MPR pamphlets at Ans Aux Pins and Anse Royale on 18 May 1985, when he was arrested and taken to the Central Police Station. The Commission recalls Mr. Barallon's evidence that he and five others with him were detained for three weeks at Central Police Station and subsequently taken to Long Island Prison, where he remained until approximately late October or November 1985. As such, the Commission finds that Mr. Barallon's physical liberty was deprived, and the first element satisfied.

70. Secondly, on the element of the unlawfulness or arbitrariness, the Commission notes that Mr. Barallon was detained with a number of others including Bernard Racombo, Allain Tirant, Guy Agathe, Guy Tirant, and Joseph Leon. The Commission also recalls that the charge sheet against the group, which the Commission highlights was dated 2 October 1985 although they were detained from 18 May 1985, showed that they were detained and charged pursuant to Sections 89(A)(1)(a) and 55(1)(c) of the Penal Code, Cap.73, "indicating or implying that it might be desirable to do any other act, which is calculated to bring death to any person" and "distribution of seditious publications". The Commission notes that Mr. Barallon was thus detained and charged under the Penal code, which, on its face, was pursuant to a legal process—albeit one extremely late, in violation of the Criminal Procedure Code, which requires that a person detained be brought before the court without undue delay.[20] While the Commission accepts that governmental authorities have the power to order the detention of persons that have allegedly committed crimes, any such power must be exercised in conformity with the internationally accepted human rights principles of legality, necessity, proportionality, and non-discrimination.[21]

71. In that regard, the Commission notes that these charges related to a political flyer that stated, "Wanted Dead or Alive Albert René for Killing Seychellois". The Commission notes that the term "wanted dead or alive" in the poster was more likely than not a play on old 'wanted' posters, and not a genuine attempt to encourage President René's death by violent means. Moreover, the Commission considers

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[19] The Commission notes that the term "detention" corresponds to the state of being under police or State custody for any amount of time, whereas "imprisonment" references being detained specifically as the result of a conviction. Hence, the "detention" prong falls into the broader "other deprivation of physical liberty" provision of Section 2(8)(b) of the TRNUC Act. This violation stems from a violation of the rights to personal liberty and to due process of law, among others, which are enshrined in the Universal Declaration of Human Rights (UDHR). *See* UDHR, arts. 3 (right to liberty and security of person), 7 (equal protection of the law), 9 (freedom from arbitrary arrest, detention, or exile), 10 (right to fair and public hearing by impartial tribunal), G.A. Res. 217A (III) (Dec. 10, 1948).

[20] Laws of Seychelles, Title V B, Cap. 73: PENAL CODE, secs. 55(1)(c), 89(A)(1)(a) (1 February 1955); Laws of Seychelles, Title V A, Cap. 45: CRIMINAL PROCEDURE CODE, sec. 85 (1 February 1955).

[21] UDHR, arts. 2 (non-discrimination) and 29(2) ("In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society"). The Commission notes that the approach of Article 29(2) in requiring that limitations on rights be "determined by law" rather than in an arbitrary or *ad hoc* basis formed the basis of the bedrock principle of legality, associated today with the principles of necessity and proportionality which were later provided in various articles of the International Covenant on Civil and Political Rights (ICCPR). *See* ICPPR, arts. 12, 18-22, 16 December 1966, 999 U.N.T.S. 171 (ratified by Seychelles on 5 May 1992); *see also* CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, paras. 4-8, 16.

it highly questionable that the passing of leaflets to a couple of friends, which voiced opposition to the one-party State and the rule of President René, was a legitimate threat to security justifying the detention of Mr. Barallon and multiple others. In this regard, the Commission recalls Article 29(2) of the UDHR, which requires limitations to the rights set out within the Declaration to be "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".[22] The Commission further notes that the criminalisation of sharing political commentary or materials that are critical of the regime, and its policies, does not meet the requirement that a limitation be applied for the general welfare in a democratic society. In this regard, the Commission highlights that acts done in exercise of the right to freedom of expression, even when described by a one-party State as "seditious", does not meet this requirement in the present circumstances.

72. In addition, the Commission finds numerous due process violations in this case, further augmenting the finding that Mr. Barallon's detention was arbitrary and unlawful. The Commission finds that Mr. Barallon was denied the right to be informed of the reasons for his detention and access to other legal protections consistent with due process for a period of approximately four-and-a-half months, further supporting a finding of a violation of Mr. Barallon's rights. The Commission here recalls the State's failure to charge Mr. Barallon during his detention from May through to October or November meant that Mr. Barallon would have been detained without knowing the basis for his detention, in violation of his due process rights.

73. On the basis of the above, the Commission finds that Mr. Barallon's detention was arbitrary and thus unlawful, in satisfaction of the second element.

74. In regards to the "perpetrator" element, the Commission finds that responsibility for the violation of Mr. Barallon's right to liberty more likely than not flowed from President René, who set in place the system of complete obedience to the one-party State and complete smothering of any political dissent thereto. The Commission recalls that given the legal regime and time period in question, the President would more likely than not have known about the *en masse* detention of the six individuals alleged to have participated in the distribution of MPR leaflets at the time in question, and as he had authority over the Commissioner of Police, the Commission attributes responsibility for this violation to Mr. René.

75. Further, the Commission notes that Mr. Ogilvy Berlouis should hold partial responsibility for the detention of Mr. Barallon. The Commission recalls that Mr. Barallon and the other detainees were summoned to State House, where they met one-on-one with the Defence Minister, following their return to prison after their not-guilty verdict. There, Mr. Berlouis offered Mr. Barallon the chance to work for him, as he said the Tirant brothers had agreed to do, and that he would be rewarded with a house, a car, and a boat should he do so, as well as his release from Long Island Prison. Although Mr. Barallon apparently did not give an answer to Mr. Berlouis' proposition at that time, Mr. Barallon and the others were returned to Long Island Prison and then released after one more week. As such, on the balance of probabilities, the Commission accepts that Mr. Berlouis was in a position of authority with regard to the decision to release Mr. Barallon and the others, and thus bears perpetrator status in this case.

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[22] *Id*, art. 29(3).

76. As Mr. Berlouis was offering a position with an official State body, State House, and the President was acting in his official capacity at the time of Mr. Barallon's detention, responsibility for this violation can also be attributed to the State.

77. On the evidence above, the Commission finds on the balance of probabilities that Mr. Barallon's detention was an unlawful deprivation of his physical liberty under the TRNUC Act.

2. Abuse of Office by a Government Official

78. Deeply concerned at the actions of the police in returning Mr. Barallon to Long Island Prison after he was told by the judge that he was free, and in subsequently not permitting him to take part in or even attend his father's funeral in late October 1985, the Commission additionally characterises these events as the violation of abuse of office by a Government official under Section 2(8)(l) of the TRNUC Act.[23]

79. As these events flow from the above finding of unlawful imprisonment and immediately follow that violation, the Commission considers that its temporal and thematic mandates are met on the same basis.

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

81. Broadly, the Commission considers that this violation commonly, though not exclusively, includes discrimination or victimisation based on real or perceived political opinion or that is otherwise legally baseless or arbitrary. It recalls that equality before the law, non-discrimination, and freedom from fear of Government abuse are basic principles of human rights law at the level of customary international law as enshrined in the UDHR,[24] and that these rights may be violated when a government official abuses the power of their office.

82. First, the Commission finds that there was a use of the capacity and powers of a public office, as it finds that Mr. Barallon was brought back to Long Island Prison by police officers, and that the police also denied Mr. Barallon the chance to participate in or attend his father's funeral later that month. As such, the first element is met.

83. Second, considering a right of Mr. Barallon that was restricted in the present action, the Commission reaffirms Mr. Barallon's fundamental human rights to freedom from arbitrary detention, equal protection of the law, effective remedy, and freedom from arbitrary interference with his privacy or family.[25] It finds that Mr. Barallon was apparently accorded a fair—if not very late—trial, during which he was represented by legal counsel and then, according to Mr. Barallon, found not guilty. However, the Commission notes that when requested, the police authorities provided the Commission with a letter stating that Mr. Barallon had been convicted on 6 November 1985 for distribution of seditious publications and sentenced to one year of imprisonment, suspended for two years. The Commission also recalls the Amnesty International report which reflected this latter evidence, adding that Mr.

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[23] TRNUC Act, sec. 2(8)(l).
[24] UDHR, arts. 1, 2, 7, 12.
[25] *See id.*, arts. 7-9, 12.

Barallon was sentenced to a suspended term of imprisonment at a hearing in November but then not released until the following month. The Commission considers that it is unnecessary to find whether Mr. Barallon was found not guilty or was sentenced to a suspended term, as both had the same effect for purposes of Mr. Barallon's immediate release: the release should have been granted. Yet justice is only as effective as its enforcement, and the Commission finds that the actions of the police officers in returning Mr. Barallon to Long Island Prison after the court's decision restricted his rights to freedom from arbitrary detention, equal protection of the law, and effective remedy. Further, the actions of the police in not permitting Mr. Barallon to see his father's body without handcuffs and then to attend or participate in his father's funeral restricted Mr. Barallon's right to freedom from arbitrary interference with his privacy, family, and home, and evidently manifested as an attack upon his honour and reputation as it affected Mr. Barallon severely. The second element is therefore satisfied.

84. Third, considering whether that restriction was lawful, the Commission has no hesitation in finding that the actions of the police as recounted in the preceding paragraph were entirely arbitrary and unlawful. It again highlights that a court had found Mr. Barallon to either be not guilty or sentenced to a suspended term, and said he was free to go. Yet, he was returned to prison for weeks without any notice of new charges, and suffered the above restrictions of his fundamental human rights. The Commission notes in this regard that his eventual release was also on very questionable and arbitrary grounds, following Mr. Barallon's meeting with Mr. Berlouis during which he was offered the opportunity to work for the Government in return for his release and other perks. As such, the third element is satisfied.

85. Regarding the "perpetrator" prong, the Commission finds that while the police officers in question remain nameless, those officers were more likely than not acting on superior orders, likely including orders from Minister Berlouis and/or President René. In that regard, the Commission recalls its finding above that Mr. Berlouis likely had some authority over the conditions of Mr. Barallon's release, given the auspicious timing of his release following their meeting, and that the President would likely have been aware of the situation as he routinely used spies and agents of the kind Mr. Berlouis was likely offering Mr. Barallon to be. As such, the Commission finds on the balance of probabilities that both Mr. Berlouis and Mr. René bear some responsibility, and accords both perpetrator status for this violation. In addition, as both actors were senior State officials acting in their official capacities, their responsibility for this violation can be attributed to the State.

86. Therefore, the Commission finds that Mr. Barallon also suffered the violation of abuse of office, in further violation of his human rights.

3. Wrongful Termination of Employment

87. The Commission finds, on the balance of probabilities, that prior to his arrest and detention, Mr. Barallon suffered the violation of wrongful termination of employment from Union Lighterage Company, under Section 2(8)(j) of the TRNUC Act.[26] The Commission recalls that the Universal Declaration of Human Rights (UDHR) recognises the right of everyone "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".[27]

[26] TRNUC Act, sec. 2(8)(j).
[27] UDHR, art. 23.

88. In consideration of the required admissibility nexus of the violation to the Coup d'état of 1977,[28] the Commission finds that Mr. Barallon's termination was based on the perception that he was against the Government in power, due to the alleged circulation of MPR leaflets from South Africa, and thus likely done at the direction of the President who had taken power with the Coup d'état of 1977. The events underpinning the claim moreover occurred during the time of the one-party State, thereby meeting both the thematic and temporal mandates of the Commission. In that regard, the Commission is satisfied that Mr. Barallon's termination was sufficiently linked to the Coup and the party in power to bring his complaint within its mandate.

89. The Commission considers that the violation of wrongful termination of employment under the TRNUC Act consists of the 1) dismissal of a person from their position at work, 2) whether by unlawful or arbitrary means, including but not limited to reasons of retaliation or discrimination, 3) by a perpetrator.[29] The violation applies equally to dismissal of employment from either the public or private sector.

90. In regards to the first element, the Commission finds that Mr. Barallon was dismissed from his position at Union Lighterage Company (ULC) in mid-1985, more likely than not in early May of that year. The Commission recalls Mr. Barallon's evidence that one day, Mr. Barallon was working at New Port when Mr. Medaris Mussard (deceased), a militia security guard, approached him and told Mr. Barallon that he was going to escort him outside as he was no longer working for ULC. As Mr. Mussard and many of Mr. Barallon's colleagues were militia members, and thus empowered to act with governmental authority, the Commission is satisfied that the State was involved in terminating Mr. Barallon's employment, satisfying the first element of the violation.

91. Regarding the second element, the lawfulness of the termination, the Commission finds that Mr. Barallon received no formal letter setting out the basis for his termination. However, when escorting him out, Mr. Mussard apparently told him to stop taking things from the MPR in South Africa. The Commission also recalls Mr. Barallon's evidence that other colleagues of his had expressed their views to Mr. Barallon that he should not be employed at ULC because he was a democrat. As no official basis was apparently ever provided to Mr. Barallon for the termination of his employment, in contravention of the due process principle of notice—and as Mr. Barallon stated that no avenue existed in the 1980s to appeal such decisions—the Commission finds that Mr. Barallon's termination was more likely than not arbitrary, based on his political affiliation and in retaliation for circulating opposition leaflets, rather than for a legitimate work- or performance-related reason. The Commission notes that this violates Mr. Barallon's fundamental rights to work free from political discrimination, to equality before the law, equal protection of the law, and to an effective remedy.[30] As such, the Commission finds that the second element is met.

92. Regarding the "perpetrator" element, on the evidence received, the Commission is satisfied that the person who bears primary responsibility for Mr. Barallon's wrongful termination is former President René, as it was the President who had full and final say as to whether an individual could be employed

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[28] TRNUC Act, sec. 2(8).
[29] The Commission notes that this violation applies to discrete events, i.e., single acts of firing, either where the State made a direct termination of one or more of its employees in a wrongful manner or where the State interfered with the private employment of an individual resulting in the person's termination.
[30] *See* UDHR, arts. 2, 7, 8, 23.

in the public sector. In this regard, the Commission recalls the evidence of Willy Confait, who was the Senior Assistant Secretary for the Department of Public Administration, 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.[31] The Commission recalls the evidence received that this power was used to ensure the loyalty of those employed in the public service, and extended to the private sector by virtue of the consequences for those who demonstrated any disloyalty to President René.[32] The Commission finds that it was more likely than not the President who had at least sanctioned, if not ordered, Mr. Barallon's termination from ULC, likely following the advice of members of the People's Militia, with whom Mr. Barallon worked. As Mr. René was acting in his official capacity at the material times, his responsibility can also be attributed to the State.

93. Therefore, the Commission finds, based on the foregoing evidence, that Mr. Barallon suffered the violation of wrongful termination of employment.

4. Forced Exile

94. Finally, the Commission is satisfied on the balance of probabilities that Mr. Barallon suffered the violation of forced exile under Section 2(8)(k) of the TRNUC Act.[33]

95. At the outset, the Commission is satisfied that the forced exile of Mr. Barallon was sufficiently related to the Coup d'état of 1977 so as to satisfy the required admissibility link for the case to be within the Commission's mandate.[34] The Commission recalls its above findings of the Government's interference in Mr. Barallon's employment and the Government's role in his unlawful detention, both of which were sufficiently linked to the Coup and ensuing one-party State. The Commission also notes that this violation occurred during its primary temporal mandate. As such, the present claim is admissible before it.

96. The Commission considers 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. The violation of forced exile is fundamentally a violation of an individual's rights to freedom of movement and to return to one's country.[35]

97. First, the Commission is satisfied on the balance of probabilities that Mr. Barallon left Seychelles on 17 January 1986 and fled first for Germany, where his brother was living, and then ultimately to the United Kingdom, where he claimed and was eventually granted asylum. The Commission recalls Mr. Barallon's evidence that he did not return to visit Seychelles until years later, in 1991, when he stayed

[31] *See* Evidence: Lewis Betsy 002 Willy Confait 13/09/2019 – 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.
[32] *See* Final Report, Public Service.
[33] TRNUC Act, sec. 2(8)(k).
[34] *Id*, sec. 2(8).
[35] *See* UDHR, arts. 9 (freedom from arbitrary exile), 13 (freedom of movement and right to return to one's country).

for a short three weeks. On this basis, the Commission finds that the first element is met, as Mr. Barallon physically left Seychelles for a sufficient period of time.[36]

98. In regards to the second element, of unlawfulness or arbitrariness, the Commission finds that Mr. Barallon was more likely than not effectively expelled from Seychelles. The Commission highlights the previous conversation with Mr. Berlouis, who admonished Mr. Barallon that President René did not want him in the country and that he would have to "change" to fit in with society, then offering him a job to work for Mr. Berlouis, the implied alternative being to leave the country. Next, the Commission recalls the claimed event when aggressors from the car S1122 grabbed him at night, and Mr. Barallon's evidence of general harassment and victimisation thereafter, including continued surveillance by occupants of car S1122. Further, the Commission recalls the evidence that Barry Trigwell (under the alias Jim O'Boyle), an investigator for President René, who apparently also worked for the MPR, advised Mr. Barallon's sister in South Africa to tell him to leave the country immediately after his release from prison.

99. The Commission also highlights that despite having returned to visit Seychelles briefly in 1991, Mr. Barallon still never felt safe to go out and opted to stay home, as according to him, certain people still wanted to kill him. The Commission notes that Mr. Barallon stated that he was afraid to give his evidence before the Commission, even in October 2020, the month in which the first opposition candidate took the Presidency in the country's history, and that he had never told his adult son about what had occurred in Seychelles, signalling lasting impacts to Mr. Barallon. On this basis, the Commission is satisfied that Mr. Barallon was effectively given no choice but to leave the Seychelles. As all of the above were inflicted on Mr. Barallon on the basis of his political beliefs, as found above, the Commission finds that the conditions of life for Mr. Barallon had deteriorated in Seychelles such that he felt he had to leave for his own safety. As such, the second element is satisfied.

100. In terms of the "perpetrator" element, the Commission recalls the above findings of responsibility of President René and Defence Minister Berlouis in authorising, sanctioning, or otherwise using to their benefit the conditions that led to Mr. Barallon resorting to fleeing the Seychelles, and as such, accords both individuals perpetrator status. The Commission notes that the President in particular evidently had the authority to change the conditions Mr. Barallon was living in and ensure his safety, which he did not do.

101. As the President and Mr. Berlouis were both acting within their official capacities as part of the Seychelles Government at the time, the Commission is satisfied that responsibility for this violation can be imputed to the State.

102. On the basis of the foregoing, the Commission finds that Mr. Barallon suffered the violation of forced exile under the TRNUC Act.

V. RECOMMENDATIONS ON REPARATIONS

[36] 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.

103. The Commission recommends that Mr. Barallon be awarded reparations in accordance with the Commission's Reparations Policy for the violations suffered as laid out above.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

104. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 063.

105. 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