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Case No: 066

The Truth, Reconciliation and National Unity Commission

In the Complaint of Basil Soundy

31 December 2022

Determination on the Complaint of Basil Soundy

Complainants:

Basil Soundy

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Mr. Basil Soundy,

OBSERVING that the complaint of Mr. Soundy, who brings his complaint as a representative of Mr. John Henry Atkinson's heirs, was filed on 21 August 2019, in conformity with Sections 3(4) and 3(5) of the Truth Reconciliation and National Unity Act, 2018 ("TRNUC Act");

NOTING that pursuant to Section 2(8) of the TRNUC Act, the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977,[1] and Mr. Soundy alleged unjustified acquisition of land and business,[2] during the primary temporal period of the Commission's mandate from the Coup d'état of 1977 until the reintroduction of the multiparty system in 1993;

RECALLING that pursuant to Rule 25 of the Rules of Procedure and Evidence of the Commission, the test for admissibility is low but a "complaint will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission", and in this case, the Commission rendered the complaint of Mr. Soundy prima facie admissible on 28 October 2019;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard the complaint of Mr. Soundy on 28 February 2022,[3] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

CONSIDERING the evidence heard by the Commission, coupled with the Commission's consideration of similar cases;

HEREBY determines, pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission Act, 2018 ("TRNUC Act"), as follows:

1. The Commission recalls Mr. Soundy's evidence that he brings his complaint on behalf of the heirs of the late Mr. and Mrs. Atkinson, concerning the acquisition of Northholme Hotel. Mr. Soundy claimed that the hotel was acquired from Mr. Atkinson by the Government of Seychelles under duress in May 1981. Mr. Soundy stated he had the power of attorney from the heirs of Mr. Atkinson to represent them before the Commission. The Commission notes that Mr. Soundy was the Managing Director of the Northholme at the time of its acquisition. The Commission recalls Mr. Soundy's evidence that for 42

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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"].

[2] TRNUC Act, sec. 2(8)(h). The Commission has considered that the violation of unjustified acquisition or loss of property or business entails 1) the unlawful or arbitrary taking or appropriation 2) of the physical, real, financial, intellectual, or other property or business of one or more persons 3) that results in the deprivation or interference of use of the property or business by that person 4) without adequate, prompt, and effective compensation, 5) by a perpetrator. The Commission recalls that this violation is a violation of the fundamental human right to property, including the protection from arbitrary deprivation of property, enshrined in the Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, art. 17.

[3] Hearing No. 259 of Monday, 28 February 2022.

years, he had been trying to convince the authorities in Seychelles that the change of ownership of the Northholme Hotel was done under duress;

2. The Commission notes that Mr. Soundy provided the Commission with a copy of a letter addressed to Mr. Soundy from Mr. Atkinson, dated 9 October 1992, which stated as follows:

> As I am not currently within the Republic of Seychelles, please be so kind as to act and to do all things for me and upon my behalf in the matter of endeavouring to recover for me fair and reasonable compensation for the acquision (sic) by Government, whilst I was under severe duress, of the assets of Northholme Hotel, being parcels H202 and H344 with the Hotel buildings and business thereon, which assets including a very substantial excess of nett (sic) assets over nett liabilities, were acquired under the aforementioned severe duress against my free will and without any compensation whatsoever on 29 May 1981. [...] Trusting that you will be able to help me in this long and painful matter [...]

3. The Commission recalls Mr. Soundy's evidence that Mr. Atkinson invested heavily in Seychelles, and was involved in various business and tourist activities. In 1970, Mr. Atkinson purchased the Northholme Hotel on Parcels H202 and H334 from the previous owners, the Michauds. In 1974, Mr. Atkinson retained an architect to increase the accommodation of the hotel from nine rooms with 18 beds, to 16 rooms with 32 beds. The Commission recalls that it was a chalet-style hotel, and in 1976, extensive renovations and landscaping were carried out on the original hotel structure. These renovations were completed in 1977;

4. The Commission recalls Mr. Soundy's evidence that in 1979, Mr. Atkinson decided to expand the capacity of the hotel further to 124 beds, from the existing 32 beds. The plans were proposed for a chalet-style project. Mr. Soundy recalled that in 1979, the value of the property was estimated at SR 16.2 million, and in the audited accounts, a total value of SR 21.2 million was the re-valued estimate including profit carried forward;

5. The Commission recalls Mr. Soundy's evidence that in 1980, Mr. Atkinson was in close negotiations with Italian investors based in Rome, who had agreed to invest up to 75% of the required funds for the development, and a contract was entered into. Mr. Soundy stated that the planning application was submitted to the Planning Authority and to the relevant Minister, Dr. Maxime Ferrari, who he claimed fully supported the application. Minister Ferrari presented the planning proposal to the Council of Ministers, who approved the project for another 90 beds on 13 March 1980, and granted a building license. The Italians mobilised their funds, and Mr. Atkinson got the support of Barclays Bank to loan him SR 2 million in advance and to grant an overdraft facility of SR 5 million;

6. The Commission recalls Mr. Soundy's evidence that on 24 April 1981, the Ministry of Lands advised the Northholme Hotel that the previous decision of the Planning Authority was ill-advised and planning approval had been amended to only provide for an additional 12 beds. The Commission recalls Mr. Soundy's evidence that this came as an enormous shock to Mr. Atkinson, especially as the Italian investors had already mobilised their funds and signed a lease agreement with Mr. Atkinson for 10 years after the chalets were built;

7. The Commission notes that Mr. Soundy provided the Commission with a copy of the letter from Mr. D. M. Hall, Ag. Secretary Planning Authority, which stated as follows:

Proposed 90 beds extension to Northholme Hotel

1. I have been authorised by the Minister for Planning and Development to write to you conveying the Council of Ministers decision on the above planning application.
2. As the Minister and officials of this Ministry have stated previously the Government welcomes your company's desire to improve the quality of public facilities and accommodation at the Northholme Hotel and Council will endorse any planning application with that objective.
3. However, Council is of the opinion that the previous decision of the Planning Authority to allow as many as 90 extra beds of accommodation on the Northholme site to have been ill advised. This decision was taken before it was required that planning applications for extensions to existing hotels should be referred to Council. Members consider that 12 additional beds in three bungalows, is the maximum number that the site can accommodate without detracting from its beauty and tranquil character.
4. The Minister has therefore asked me to request that your company amend the present application to show the reduction in bedroom accommodation that Council requires, after which the permission documents can be issued immediately. He also asked me to assure your company that an application for detailed permission for the other general improvements to the hotel illustrated in the previous outline planning application will be endorsed by Council as soon as it has been processed by this Ministry.
5. I look forward to attending to your architect upon arrival at this office to amend the current planning application.

8. The Commission recalls Mr. Soundy's evidence that at the time this information was conveyed, Mr. Atkinson was in Mombasa. When Mr. Atkinson was informed of the situation by Mr. Soundy, he immediately returned to Seychelles to discuss the "extraordinary reversal" of the decision with Minister Ferrari and to explain to Minister Ferrari that finance had already been mobilised. Mr. Soundy recalled that Minister Ferrari was adamant that he would not be prepared to see the President on the matter, and Minister Ferrari was angry that Mr. Atkinson had suggested that he did so. The Commission recalls Mr. Soundy's evidence that it appeared that Minister Ferrari did not have a good relationship with President René at the time, as Minister Ferrari went red in the face and said he was not going to State House to argue the matter;

9. The Commission recalls Mr. Soundy's evidence that Mr. Atkinson was upset with the Government for reneging on its approvals, and the Italian investors began to seek compensation for their reliance on the contract. Mr. Soundy claimed that the revocation of the approval to Mr. Atkinson was duplicitous and politically motivated;

10. The Commission recalls Mr. Soundy's evidence that the Government of Seychelles put Mr. Atkinson under a lot of pressure and duress. The Italian investors had already communicated to their fiduciaries and Mr. Atkinson that they would sue;

11. Then, on 31 May 1981, the Government of Seychelles forced the sale of the Northholme Hotel for SR 1. Mr. Soundy claimed that Mr. Atkinson agreed to this under duress. Mr. Atkinson was stressed and he did not know what to do and he and his company were going to be sued by the Italian investors;

12. The Commission recalls Mr. Soundy's evidence that Mr. Atkinson signed the transfer under duress, against the background of veiled threats concerning Mr. Atkinson's other assets, including his ownership of 60% of the shares in Bodco. Mr. Soundy stated that the compensation of SR 1 for the

Northholme was an insult and it was never paid by the Government, which invalidated the sale agreement;

13. The Commission notes that despite this latter allegation, the transfer of land document, dated 29 May 1981, stated that "the transfer is in consideration of Rupee One (which has been paid)";

14. The Commission recalls Mr. Soundy's evidence that Mr. Atkinson advised Barclay's Bank of the decision, as he had received SR 2.2 million advance on Northholme, and the Manager of Barclay's Bank told Mr. Atkinson that he was responsible for the SR 2.2 million. The Commission notes Mr. Soundy's claim that as Mr. Atkinson had sold the company for SR 1, the Government became responsible for its assets and liabilities, including the bank loan;

15. The Commission recalls Mr. Soundy's evidence that the interim report prepared by Compagnie Seychelloise de Promotion Hôtelière (COSPROH) provided that the Northholme and all its moveable assets were transferred to the Government of Seychelles, stamp duty free, and subject to the Government discharging the loan of SR 2.2 million. Mr. Soundy noted that the Government took on the assets and liabilities of the hotel, but that consideration was not in the document of sale;

16. The Commission recalls Mr. Soundy's evidence that by the end of June or early July 1981, the Government had cleared the liabilities with Barclays Bank, but again this was not in the sale agreement;

17. The Commission notes that Mr. Soundy provided the Commission with a letter from Conrad Gresle & Co, Public Accountants and Auditors, dated 20 April 1982, addressed to the Secretary of Apidex, Geneva, confirming that Gresle & Co acted as auditors for Northholme Limited, and that all fixed assets of the company were taken over by the Government of Seychelles on 31 May 1981 for consideration of SR 1. The letter also stated that the company had a loan of SR 2.2 million with Barclays Bank, and that this loan was taken over by the Seychelles Government, also noting that the net current liabilities of the company had been financed by the shareholders;

18. The Commission notes a transfer agreement on file between the Government of Seychelles and Mr. Atkinson, dated 29 May 1981, stipulating the transfer of the company (name not specified) and the hotel, and that the consideration for the transfer shall be the Government's acceptance of the liability to the said charge of SR 2 million registered against Title H202;

19. The Commission notes Mr. Soundy's evidence that Mr. Atkinson had a private apartment attached to the luxury suites at Northholme, which the Government said he could continue to use for the duration of his life free of charge, though he would have to pay for his food and beverages. Mr. Soundy recalled that Mr. Atkinson's apartment was broken into by the Italian Manager of the Northholme, who allegedly took everything out of Mr. Atkinson's apartment, for which Mr. Atkinson sued COSPROH;

20. The Commission recalls Mr. Soundy's evidence that the heirs of Mr. Atkinson were not interested in getting the property back, but they wanted "a fair adjudication of the whole problem", and would accept the value of the property as of 1979. Mr. Soundy claimed that at that time, without any goodwill, the property was worth SR 16 million, and with goodwill it was worth SR 21 million;

21. The Commission recalls Mr. Soundy's evidence that following the Government's acquisition of the Northholme, the Government decided to lease it for a few years to Mrs. Maryse Eichler. Shortly

thereafter, Mrs. Eichler made an offer to purchase the hotel for less than USD 2 million,[4] and it was then that COSPROH decided to sell the hotel;

22. The Commission recalls Mr. Soundy's evidence that on 12 June 1981, the *Nation* published an article,[5] reporting that the Northholme had been acquired, and a new parastatal organisation, COSPROH, had taken over the hotel and property some two months later. Mr. Soundy noted that Mr. Grandcourt became the first chairman of COSPROH, and had previously been the Principal Secretary to Minister Ferrari. Later, Mr. Mukesh Valabhji became the Chairman of COSPROH;

23. The Commission notes a land transfer document, dated 31 December 1990, whereby COSPROH transferred to Northholme Limited titles H202 and H344 for consideration of SR 6,896,668;

24. The Commission recalls Mr. Soundy's evidence that COSPROH sold the Northholme to a Swedish-Maldivian company, represented by Hussein Afif, who leased the hotel to the Hilton Hotels Group;

25. The Commission recalls Mr. Soundy's evidence that Mr. Atkinson made many representations over the years to COSPROH to purchase what they took from him. Mr. Atkinson offered US 3.5 million to buy the hotel back, but Chairman Valabhji said that was far too little for the hotel, and refused the offer. Mr. Soundy claimed that this was an injustice for and "persecution" of Mr. Atkinson;

26. The Commission recalls Mr. Soundy's claim that the acquisition of the Northholme by the Government in 1981 was illegal, made under extreme duress, and under threat. Mr. Soundy claimed that he had been in and out of the courts over the past 30 to 40 years seeking compensation for the acquisition and closure of the hotel. Mr. Soundy stated that Mr. Atkinson was not Seychellois, he was not a resident in Seychelles, and he did not have a work permit. Mr. Soundy claimed that Mr. Atkinson's lack of residency and work rights influenced the judiciary in the consideration of his claims;

27. The Commission notes that Mr. Soundy provided to the Commission a letter he wrote to Mr. Atkinson, dated 14 October 1992, advising that he had discussed the acquisition of Mr. Atkinson's properties with Mr. James Mancham. Mr. Mancham had suggested that as a British citizen, Mr. Atkinson should write to the Hon. Mrs. Linda Chalker, the Minister for Overseas Development in Great Britain, and request her intervention with the British High Commission in Seychelles;

28. The Commission notes a letter, provided by Mr. Soundy, dated 15 October 1992, from Mr. Atkinson to the Hon. Mrs. Linda Chalker, which set out his claim as follows:

> In the late 1970 in Seychelles, I founded Northholme Limited which company purchased from the Michaud family with effect from January 1971 the freehold beachfront land surveyed as plot H202 and the (the small but beautifully rustic) Northholme Hotel as a going concern which stood upon that land. Then, in 1973, we purchased (to enable development of the hotel business) the immediately adjacent plot H344. Subsequently we engaged British architects and embarked upon extensive improvements including much rustic extension of the buildings, modern catering facilities and seven extremely luxurious and spacious splitlevel suites all of which improvement then then

[4] The Commission notes that while it does not have a specific date for this offer, between the years 1983 and 1985, this would have ranged from between SR 12 million and SR 14 million. *See* Laurent Pelé, FX Top, https://fxtop.com/en/historical-currency-converter.php?.

[5] Mr. Soundy provided the Commission with a copy of the article.

Tourism Authority particularly welcomed, acclaiming the development to be tasteful and the suites to be the best available in the Seychelles.

All the capital had originated from me until, seeing our good progress, Barclays Bank advanced to Northholme Limited partial loans eventually being Seychelles Rupees Two Million. At the time of the "revolution" we had further development plans which were to be partly financed by an increase in the loan by Barclays. However, the "revolution" left the company with an uncertain future and so we completed all work already in hand but refrained from the further development pending a resumption of good business from our main sources (which was Thomas Cook and Hayes & Jarvis) and a resumption of willingness by Barclays to increase their partial loan.

By 1980 I was being subjected to tremendous contradictory pressures. In one direction I was being pressed to, as the tourism authority of that time puts it "modernise the image" meaning to do away with all the rustic charm (which the guests always admired but some people in authority felt were old-fashioned and therefore shameful) and substitute concrete and chrome. In another direction I was being pressed to demonstrate my confidence in and support of the regime by resuming development but, here again, the pressure was to re-draw the designs to a style not to our guests' tastes. The Hotel certainly needed the further rooms to make it economically more viable, but where were the extra guests to come from? Which question caused the only pressure with which we agreed, being pressure not to increase the availability of additional empty hotel space in Seychelles.

An apparent solution arose from an Italian consortium who offered both to provide the development funds and to underwrite a consequent influx of visitors through their own associated organisation in Italy. However, they insisted that I withdraw my own development plans and re-submit to the authorities entirely different style which attracted severe resistance at the highest government level. The Italians insisted that I pressed vigorous appeals and, after a sympathetic Cabinet Minister had strongly argued the case for me, consent was eventually granted. Unfortunately, when the Italians were informed that they could go ahead, they backed out, leaving me in a very embarrassing situation. By then, the Seychelles government had formed their own parastatal hotel corporation which badly lacked hotels, and it was well know (sic) that an illness forced me to take my late wife back to England, so they saw fit to inform me that, before I would be allowed to leave Seychelles, either Northholme Limited must irrevocably engage a constructor to construct the (needless) development, or government would compulsorily acquire the property and re-develop everything to their own designs, leaving my empty company still have to repay Barclays loan of two million rupees.

Neither Barclays nor anyone else was willing to put-up capital for needless construction, and the best that I could so, in the severely limited time before I had to take my wife to England, was to agree to VOLUNTARY SURRENDER the property on 29 May 1981 to their parastatal, in return for the Government accepting responsibility for repayment to Barclays of the loan which then stood at exactly Two Million Rupees.

Just as with my residential property, I have felt restrained against making any stronger or public protest by the fact that I am the Chairman and major partner of ongoing businesses in Seychelles and I, and my partner and many employees depend considerably upon avoiding any possible retaliatory action or sanction by government.

However, I believe that we are entitled to the return of plots H202 and H344 and the buildings and business thereon but, as we have suffered the denial of these assets for nearly twelve years, we would be unlikely to agree to greatly compensate the parastatal in respect of such of their construction as we find it necessary to demolish, re-build or renovate. Therefore we would accept the alternative of

> full compensation of the nett asset value (which a professional local valuation on-site stated as being Seychelles Rupees Eight Million Seven Thousand and Fifty-Three but the auditors certified on the balance sheet as being Seven Million One Hundred and Seventy-Eight Thousand One Hundred and Forty-Six).
>
> Your kind intervention and assistance will be greatly appreciated.

29. The Commission also notes a letter dated 17 November 1992, from D. H Cairns, African Department of the UK Foreign and Commonwealth Office, advising Mr. Atkinson to make a claim for compensation through a local lawyer to the Ministry of Community Development;

30. The Commission notes that on 13 May 1993, Mr. Atkinson made a claim for compensation from the Ministry of Community Development, through lawyer Mr. Ramnikal Valabhji;

31. The Commission further notes a letter on file from the General Manager of COSPROH to Mr. Atkinson, referring to a letter of Mr. Atkinson dated 24 March 1998, on the subject of the Northholme Hotel, which stated as follows:

> The matter has been discussed and we are agreeable to provide you with a firm option valid until 30 April 1998.
> With regard to a right of first refusal thereafter, it would really depend on whether we are able to agree on a price by 30th April 1998. As we have no indication from you in this regard, we are unable to commit ourselves to a "first refusal" for such an extended period as requested by you.
> To reiterate the main points:
> 1) COSPROH as the 100% shareholder of Northolme (sic) Hotels Ltd, is willing to sell this 100% shareholding for the price of US Dollar 3.5 million
> 2) Northholme Hotels Limited has leased its asset, the property known as Northholme Hotel, to Compagnie I'Habitation des Isles until 31 January 2002. I have given you a copy of this lease for study. If you wish to have the property free of the lessee, you would need to negotiate that directly with the lessee.
> 3) In a letter dated 27th October 1997, the lessee had informed us inter alia that, "my price for giving up the lease is SR 3.5 million". I conveyed this to you verbally, and if you so wish, you may have sight of the letter during your next visit to Seychelles.

32. The Commission notes an assessment of the matter by the Ombudsman, dated 28 December 2018, prepared for the now defunct Lands Tribunal, which stated as follows:

> I am of the view that on a summary review of the facts and history of this acquisition, it was unjust and oppressive. It is evident that the Complainant did not receive any consideration whatsoever for the sale of a valuable piece of real estate and a going concern since it was only the liability of the loan of SR 2million that was taken up by the GOS. Furthermore, it is trite that the hotel was transferred to the stateowned entity COSPROH which subsequently sold it for valuable consideration. I strongly recommend that the Lands Tribunal review the matter and consider payment of reasonable compensation to the Complainant. It is of particular note that the Complainant is open to negotiations for an amicable settlement of this long outstanding matter.

33. Mr. Patrick Lablache, consultant with the Ministry of Lands, during his appearance before the Commission on 7 March 2022,[6] informed the Commission that the acquisition of the Northholme took place in 1981. Mr. Lablache did not recall the issue concerning the revocation of planning permission. Mr. Lablache stated that he was privy at the time to discussions with Mr. Atkinson and the Government, but that he never saw Mr. Soundy. Mr. Lablache claimed that Mr. Atkinson came and offered the hotel to Government and asked the Government if they would take it for SR 1. Mr. Lablache noted that at the time, British Airways had stopped coming to Seychelles, and Mr. Atkinson was losing money. Mr. Atkinson had informed the Government that he had a SR 2 million overdraft and he asked the Government to take over the hotel and the overdraft;

34. Mr. Lablache informed the Commission that he had called the Land Registry and asked to check their records. Mr. Lablache said he had been informed that in May 1981, there was a transfer document and an agreement between Mr. Atkinson and Government. Mr. Lablache recalled that the overdraft of SR 2 million in 1981 was a lot of money for a 10-room hotel that was not in the best condition. Mr. Lablache stated that Mr. Atkinson, when negotiating, made certain requests to be able to keep all of his personal belongings in his room, which he and his wife were allowed to continue to use free of charge. Mr. Lablache recalled that Mr. Atkinson had two rooms at the hotel, one for personal belongings and one bedroom. Mr. Lablache also recalled that Mr. Atkinson was given a discount of 15% on normal prices at the hotel, and he was granted access to a car and a boat, without charge;

35. The Commission recalls Mr. Lablache's evidence that the sale of the Northholme was a negotiated deal. He stated that the Government transferred the hotel to COSPROH and paid off the overdraft to Barclay's Bank. Mr. Lablache stated that it was in May 1982 that then property went to COSPROH, and then in 1990, COSPROH transferred it to Northholme Ltd. Mr. Lablache stated that it made sense for each hotel owned by COSPROH to have a separate company owner, so that when a hotel was sold, its company was sold with it. Mr. Lablache recalled that COSPROH leased the hotel for a while, and then put it up for tender;

36. The Commission recalls Mr. Lablache's evidence that Mr. Atkinson had been successful in having his property at Beau Vallon returned to him through court proceedings, and that Mr. Atkinson could have taken this matter to court as well. Mr. Lablache noted that when the hotel was sold, Mr. Atkinson took the new owners to court over the use of the rooms and other conditions he had negotiated with the Government, but the court ruled that the agreement was with the Government and not the successors;

37. The Commission recalls Mr. Lablache's evidence that the Ministry of Lands did not hold any files in relation to the dispute between Mr. Atkinson and the successors, as it is a developed property that belongs to a third party;

38. The Commission notes that it sought the assistance of Mr. Robert Grandcourt, who provided a statement to the Commission on 31 March 2022, which stated as follows:

> Following the 1977 Coup, the French Government, which interpreted it as a revolt against Mancham's Anglophone administration, decided to reinforce cooperation with the new regime by providing financial and technical assistance in the cultural, fisheries, hotel, and law and order

[6] Hearing No. 264 of 7 March 2022.

sectors; a package geared to increase the French Government's influence and economic benefits for itself. Although the relationship has waxed and waned since then, it has proven a winner for France. Soon after their arrival in 1977, the French technical assistants, to gain favour with the Rene regime, recommended that a new hotel school and adjoining training hotel be built at Carana Beach to be financed by the French Government. Detailed plans were prepared, but the French Government-backed out when the cost and the potential of financing a white elephant emerged, especially after the post-coup turmoil. Instead, encouraged by the French Government, the Fisherman's Cove Hotel was bought in 1981 and a tourism school was built next door. Acts were designed not only to minimize the cost to the French Government but also to deal with the owner, a French national (Gamard) who had run away without paying his taxes.

Prior to the coup, the Fisherman's Cove Hotel was viable but the uncertainty provoked by the Coup and mercenary attack took its toll on the tourism industry. Upon the advice of the French tourism technical assistants, the Compagnie Seychelloise de Promotion Hôtelière (COSPROH) was established in August 1980. As I was the PS responsible for cooperation, I was nominated as chairman with the late Mrs Maryse Eichler as a board member and Mr Philippe Michaud as the secretary with two French cooperants responsible for overseeing the hotel's management.

As I indicated in my presentation on the painful acquisition of the Flying Dutchman, by 1981 my disillusionment and disappointment with the Government had accumulated to such an extent that I started more rigorously preparing for my exit. After realising that a BA degree, even a first-class one, was inadequate to obtain a post with an international organization, I decided to take a sabbatical leave to obtain the necessary qualifications. This meant that even more than before, I concentrated on economic development and left or delegated other tasks to qualified individuals, in particular property acquisitions to the Minister, land officer, and Mr Oscar Spencer OBE, a UK Government-funded technical assistant, and special adviser in the Ministry.

My memory of the "purchase" of the Northolme (sic) in 1981, confirmed by Mr P Michaud, is that it was an agreement arranged between the seller, Mr Atkinson, and two British-funded technical assistants: Mr Spencer OBE and the then land officer. I understood that a combination of the aftermath of the coup and the size of the hotel had rendered it unviable leading to the Company's debt to the Bank amounting to approximately SCR 2 million. As a result, Mr Atkinson was willing to sell his property for a nominal 1 Rupee with a condition that he has a room in the Hotel free for a month if the Government was prepared to take on its debt.

The following year, 1982, when Dr Ferrari was appointed Minister of Foreign Affairs, I was transferred to his ministry as the PS for International Cooperation. A tailor-made post engineered to enable me to concentrate on international economic relations and open the door for me to obtain a scholarship from the European Union to study for an MPhil at Oxford University leading to a career with the African Development Bank and UNICEF, thus sparing me the stress of working in an environment inconsistent with my values as a patriot and human being.

39. The Commission also accessed a report that had been prepared on COSPROH by a Commission of Inquiry established by former President Danny Faure on 11 July 2018, which reported on the Northholme Hotels Limited. That report stated as follows:

> As per an agreement dated 29 May 1981, Mr. John Henri Atkinson, owner of the Northholme Limited and owner of parcels H202 and H344 (Glacis, Mahe) with an area of 15,042sqm and 5,003sqm respectively, transferred to the Government of Seychelles stamp duty free, the said parcels of land and buildings together with other moveable and immoveable assets therein subject to the discharging of a charge of SR2.0million against title H202. The consideration for the transfer was

the Government's acceptance of the liability on parcel H202 to Barclays Bank International Limited. The Agreement was signed by Mr. John Henri Atkinson, on behalf of the company, Dr. Maxime Ferrari as the Minister for Planning and Development on behalf of the Government of Seychelles and Mr. Bernard Georges Rassool, as the Official Notary.

Following from the above agreement, Northholme Limited (represented by Mr. John Henri Atkinson, Director) transferred in consideration of SR1, stamp duty free, the land parcel H202 and H344 to the Republic of Seychelles, which was represented by the President, Mr. France Albert Rene. The agreement was signed by Mr. Maxime Ferrari as the Minister for Planning and Development, Vol 1, Folio 131, File H202 and H344.
On 11 May 1982, the President acting on behalf of the Government of Seychelles, in consideration of 2,000 shares of SR 1000 each, transferred to COSPROH titles of the land parcels H202 and H344, stamp duty free. The document was signed by Mr. Bernard George Rassool, the Attorney General, on behalf of the President and Phillipe Michaud and Ms. Maryse Eichler for COSPROH. As per COSPROH's Financial Statements for the year 1982, Note 6 on Fixed Assets, the Northolme Hotel was acquired for a consideration of SR 2, 143, 077.

Under the COSPROH's reorganisation of the group holdings in 1991, the Northolme Hotels Limited was incorporated as a 100% owned subsidiary of COSPROH with 5,970 shares of SR 1000 each. On 31 December 1991, COSPROH transferred to Northholme Hotels Limited the title on parcels H202 and H344 for a consideration of SR6,896,668, for which the stamp duty was exempted, as per the transfer of land document (Vol 11, Folio 43, File H202 and H344) signed by Mr. Guy Morel representing both companies.

On 21 February 2002, Northholme Hotels Limited represented by Mr. Mukesh Valabhji agreed to lease to Huilt Illes (sic) Company Limited the hotel property comprising of parcels H344 and H202 for 69 years with the condition that the lessee would have the option to purchase the Demised Premises for a consideration of US$3,400,000 subject to the terms and conditions stipulated in the said lease agreement. The stamp duty collected on the agreement amounted to SR 10,620, as indicated in the document at Vol 11, Folio 043, File H344 and H202.

According to Mr. Mukesh Valabhji, the hotel was also leased to Ms. Maryse Eichler for a few years and she had issues with the payment of lease rental. He was also of the view that practically, Ms. Maryse Eichler was leasing the hotel for nothing. She also made an offer of less than US$2.0million for the purchase of the property. It was then that COSPROH decided to first lease and subsequently, sell the hotel to Huit Iles.

Disposal

Under the above agreement, in 2004, COSPROH sold Northholme Hotels Limited and the land parcels to Huit Iles Company Limited for a sum of SR26, 173, 360 (Appx. US$4), as per Note 13 on page 14 of the Financial Statements of COSPROH for 2004. The report of the Directors for the same year states that the company (COSPROH) disposed of Northholme Hotel Limited during the year.

In the absence of the relevant accounting records, or any other form of documentary evidence, the Commission could not ascertain as to whether proceeds of the sale (SR26,173,360) were directly collected by COSPROH itself or the GOS. However, it would appear from the financial statements that COSPROH collected the funds.

On 28 July 2006, the Northholme Limited represented by Lars Eugen Petre and Ahmed Mahir Didi, the directors, transferred to Huilt Iles Company Limited, represented by Lars Eugen Petre and Ahmed Mahir Didi themselves, land parcels H202 and H344 for a consideration of one rupee, for which the stamp duty was exempted, as per transfer document Vol 4, Folio 236 and File H202 and H344.

In the absence of relevant records, or any other form of documentary evidence, the Commission could not ascertain as to whether the land and the hotel business were valued prior to the sale and the selection of buyer was based on a competitive and transparent manner.

From the Certificate of Official Search provided by the Registration Division dated 14 May 2019, it was observed that H202 and H344 remain under the proprietorship of Huit Illes Company Limited. As per records from the Registration Division, Northholme Hotels Limited is still active, and so is the Huit Iles Company Limited. The Annual Returns and audited Financial Statements in respect of Northholme Hotels Limited were seen for the years 1990 up to 2016, which being the most recent.

40. The Commission finds on the evidence produced that Mr. Atkinson more likely than not agreed to sell Northholme Hotels and its assets to the Government of Seychelles in May 1981. However, the Commission recalls Mr. Soundy's, and thus Mr. Atkinson's, consistent claims that the sale was induced under duress, thus nullifying the agreement under the Seychelles Civil Code.[7] In this regard, the Commission notes the extreme difference between the value of the property as at 1979, which was SR 16.2 million, and the agreement of Mr. Atkinson to sell for SR 1 on the condition that the Government take over the liability of a SR 2 million debt owed to the bank, which was accepted by Mr. Atkinson. Further, the Commission recalls that Mr. Atkinson was supposedly threatened, and feared potential repercussions impacting his other interests in Seychelles,[8] if the offer was not accepted. Indeed, the circumstances indicate on the balance of probabilities that Mr. Atkinson sold Northholme Hotel to the Government under conditions that more likely than not amounted to duress. Due to the presence of such conditions in the sale, the Commission finds on the balance of probabilities that the sale amounted to a *de facto* acquisition by the Government, which was arbitrary and unlawful for the lack of adequate compensation. The Commission notes in that regard that the consideration was severely under the value of that given not two years earlier, which, even had there been some uncertainty in the market, the Commission does not accept would have discounted the value by over 85%.

41. In these circumstances, the Commission is satisfied that Mr. Atkinson suffered the violation of unjustified acquisition or loss of property under Section 2(8)(h). The Commission notes that while numerous Government officials were involved in the acquisition of the hotel, the Commission finds that perpetrator status for the violation lays with President René. In this regard, the Commission recalls the evidence it has received in other cases that overall power to decide on which land the Government would acquire and the measure of compensation that would be paid rested with the President. As the President was acting in his official capacity in making such decisions, the commission also finds that responsibility is attributable to the State;

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[7] Civil Code of Seychelles 1976, art. 1111. "Duress used against a contracting party shall be a ground of nullity, even if used by a third party other than the person for whose benefit the contract was concluded; provided that duress was the main reason why the victim of it has entered into the contract."

[8] The Commission recalls that Mr. Atkinson held a 60% share in BODCO, and the evidence in other cases of companies being subject to serious price controls and eventual takeover if they rejected Government Policy. *See* Case Determination No. 100: Soona Oliaji.

42. On the basis of the following, the Commission is therefore satisfied that Mr. Atkinson suffered the violation of unjustified acquisition or loss of property under Section 2(8)(h) in relation to the sale of the Northholme Hotel;

43. The Commission recalls that it is mandated pursuant to Section 3(7) of its Act to make recommendations for reparations for victims for human rights violation it has determined to have been established as a result of its investigations;

44. The Commission finds, therefore, that the complainant is this case shall be awarded compensation in accordance with the recommendations set out in the Commission's Reparations Policy, which reflects the views of the victims and international human rights principles as to appropriate recommendations due for the human rights violations established above.

Each of the undersigned Commissioners swears and affirms that he or she has comprehensively familiarised him or herself with the record in Case 066.

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