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Case No: 091

The Truth, Reconciliation and National Unity Commission

In the Complaint of Wilna Laporte

31 December 2022

Determination on the Complaint of Wilna Laporte

Complainants:

Wilna Laporte
Richard Laporte
Richie Laporte

I. ADMISSIBILITY

1. The following determination is made pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission Act, 2018, which provides that the Commission shall make decisions and recommendations. The determination made is in accordance with the mandate of the Commission as set out in Section 3(3) of the Act, "to receive complaints in respect of alleged violations, to gather, collate and analyse information and evidence with respect thereto, and to make decisions". Pursuant to Section 2(8) of the Act, a violation means a human rights abuse committed during or in relation to the Coup d'état of 5 June 1977, and includes a non-exhaustive list of enumerated acts.[1]

2. Prior to the investigation of a complaint, pursuant to Rule 25(1) of the Commission's Rules of Procedure and Evidence ("Rules"), the Commission must satisfy itself that the complaint is admissible before it for determination. To be admissible before the Commission, a number of criteria must be satisfied.

3. Pursuant to Section 3(4) of the TRNUC Act, a complaint shall be filed within six months of the Commission's commencement of mandate, and pursuant to Section 3(5), a complaint may be filed by a victim, a representative of a victim, or a close surviving relative of a deceased victim. The mandate of the Commission commenced on 9 August 2019. To be admissible, complaints must have been filed on or before 9 February 2020.

4. The complaint of Ms. Wilna Laporte who bring her complaint as a victim on behalf of herself and her two children Richard Laporte and Richie Laporte was filed on 30 August 2019. Consequently, Ms. Laporte's complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

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

6. In her complaint, Ms. Laporte née Adrienne alleges the unlawful killing of her husband, Phillip Laporte, in December 2000 by a taxi driver, France Panagary, who she claims was working undercover for the party that took power with the Coup d'état of 1977 as a spy. She further alleges that she was denied justice in the courts of Seychelles due to the relationship of the perpetrator with the party in

[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"].

power. Finally, she alleged that following the acquittal of Mr. Panagary for the murder of her husband, Mr. Panagary harassed her children, causing the family great fear and motivating their emigration to the United States.

II. PROCEDURAL HISTORY

7. Satisfied that the complaint of Ms. Laporte prima facie alleged violations related to the Coup d'état of 1977, the Commission rendered her complaint admissible on 29 October 2019.

8. On 17 January 2020, the Commission began hearing evidence in the case of Ms. Laporte.[2] The Commission heard evidence from four (4) witnesses,[3] received statements from another ten witnesses, and obtained relevant documentary evidence concerning her complaint.

III. EVIDENCE RECEIVED

A. Wilna Laporte

9. On 17 January 2020, Ms. Laporte appeared before the Commission to set out her complaint before it. Ms. Laporte informed the Commission that her husband, Phillip Laporte, was killed in December 2000. On the night in question, her husband went out to the Katiolo Nightclub with her two eldest sons: Richard, 20 years old, and Richie, 16 years old. Ms. Laporte recalled that usually on Friday nights there is dancing at the Katiolo Nightclub, so they went out to dance, and have fun. At the time, Ms. Laporte was at home with her younger children, two girls, who were sleeping. Ms. Laporte recalled that her sons arrived home and woke her up. They told her: "Daddy has been hurt, and we've taken him to the hospital. And he's been transferred from the Anse Royale Hospital to the main Hospital in Victoria, but he needs you to come and bring him a clean shirt. Because he has been stabbed and he has been bleeding badly".

10. Ms. Laporte stated that she immediately asked her sons to explain what happened, and they informed her that a taxi driver, had stabbed her husband for whatever reason. They later found out the taxi driver by the name of France Panagary. Ms. Laporte claimed that when her two sons had attempted to defend their father they were injured as well. Her son Richie had a large cut on his arm, and Richard had a cut on his belly. They both needed stiches. Her husband's injury was bleeding so badly that the Anse Royale Hospital could not control the bleeding. So the staff had put her husband in an ambulance and sent him to Victoria Hospital, while her two sons stayed at the Anse Royale Hospital for their treatment. Ms. Laporte's sons had both received stitches before they had come home to alert her as to what had happened. Once she had been informed, Ms. Laporte took her two daughters to her mother-in-law's house, so she could take care of them for the night. She took a clean shirt for her husband and headed down to Victoria Hospital with her two sons.

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[2] TRNUC Hearing No. 40, of Friday 17 January 2020.

[3] Wilna Laporte, Richie Laporte and Richard Laporte - Hearing No. 40 of Friday 17 January 2020; Daniel Valencia – Hearing No.91 of Wednesday 22 July 2020.

11. Ms. Laporte recalled that when she arrived at Victoria Hospital, she did not immediately see her husband. He was in a private room and Ms. Laporte and her sons were asked to wait outside and told that the staff would come back and inform them as to what was happening and allow the family to see Mr. Laporte. Ms. Laporte recalled that the family waited in a little room for over an hour and nothing happened. They didn't see anybody and they received no information whatsoever about the condition of her husband. Ms. Laporte decided to walk down the hospital corridor because she wanted to see what was going on. She recalled that she saw her husband on "a table" by himself, in a little room. The door was closed but there was glass in the top of the door so she could see that he was alone, lying face up on the bed.

12. Ms. Laporte stated that she did not enter the room as she had been told to wait, and she returned to her sons and updated them on what she had seen. She informed them that her husband was still in the room and probably still waiting for treatment as no one was with him. Ms. Laporte recalled that they waited in the room for another hour, maybe even two hours, and received no updates. Ms. Laporte then decided to walk back down to the room where she had seen her husband to see what was going on and hopefully get an update. She recalled that on her second attempt to visit her husband she observed a big frenzy. All the nurses were running around and they were trying to apply chest compression to resuscitate her husband. She observed them using two iron implements and she could see that he would lift up from the bed and then fall back down on the bed. Ms. Laporte recalled that it was very painful to watch so she left and went back to the room to her sons. There they continued to wait, for at least another 40 minutes, and still received no updates as to what was happening. Ms. Laporte recalled that finally a nurse came into the room and said "Mrs Laporte I am sorry to let you know, that your husband is dead". Ms. Laporte recalled that she screamed out loudly, it was such a shock. Her sons moved to comfort her and they hugged each other and were then sent home by the hospital.

13. Ms. Laporte recalled that the next day she went to the hospital to see what was happening and to find out what she needed to do so she could bury her husband. Ms. Laporte recalled that she was informed that she could not do anything until the investigation was completed. Her husband would have to remain in the morgue until the autopsy was carried out to determine the cause of death. Ms. Laporte recalled that she felt helpless, she didn't know what else to do. She tried to talk to friends and her family members came over and they discussed the case. The family did not know at the time why he was stabbed. Mr. Laporte was just out having fun with his sons but he ended up being killed.

14. Ms. Laporte recalled that they were not allowed to touch the body, and they were advised not to hire a lawyer, as the State would take up the case for prosecution. They were also notified that the Police had to interview Richard and Richie because they had been present at the time. The family were informed that the Police had detained the taxi driver, Mr. Panagary, the same night but that he had been released the very next morning. Ms. Laporte recalled that they went through the process of interviews, and interrogations with the Police and then the whole court case. The case was dismissed without any serious repercussions for the perpetrator. Ms. Laporte stated that what was most disturbing was that when the case went to court, the Police Investigation Report and the son's statements "magically" disappeared and were conveniently not available for the court.

15. Ms. Laporte further recalled that a witness, Daniel Valencia, was also interviewed by the Police but his testimony was also never made available to the Court. Ms. Laporte claimed that the court issued a very one-sided ruling. Ms. Laporte recalled that the whole nation was buzzing about the lack of justice, and the disservice of justice. Ms. Laporte stated that from what she had heard, Mr. Panagary was

working undercover for the State. While Mr. Panagary was a taxi driver he was also what they called a spy. Ms. Laporte claimed that Mr. Panagary was looking for his target but instead of finding the right person he had mistaken her husband as the person he was looking for.

16. Ms. Laporte stated that she was confused, and at the same time she was certain that the only person who could give her the right answer would be the President himself, because Mr. Panagary was working under the President's directive. Ms. Laporte stated that she scheduled an appointment and went to see President René. Ms. Laporte recalled that she told the President that she had heard that Mr. Panagary, who killed her husband, was working undercover for James Michel, the Vice President. Ms. Laporte told the President that she needed an explanation about what was going on and why her husband was stabbed. She asked the President whether her husband had done something that she was unaware of. Ms. Laporte recalled that the President responded, "Wilna, I do not want you to believe everything you hear, you do not have to believe everything you hear. Do not listen to every gossip you hear on the street, go home and take care of your kids". Ms. Laporte stated that she told the President "How do you expect me to go home and take care of all these children by myself, without my husband, without his income, without his support. It is tough, it is not easy". In response, the President opened a draw and gave her SR 10,000. He then told her "Go take care of your children, if you need more help come and see my Vice President James Michel". Ms. Laporte stated that she did not know why the President gave her the money but stated that she was grateful at the time. She took the money and left.

17. Ms. Laporte informed the Commission that things did not just end there because Mr. Panagary never left them alone. Ms. Laporte recalled that there was a series of harassment and she did not know whether it was on purpose but they could not find peace. Ms. Laporte recalled that her sons would be out there having fun on the beach and Mr. Panagary would come by. Wherever he would see the car he would pull up, and he would harass her boys. He would call them, and say "you do not want to talk to me now, but one of these days I know we will be friends". Ms. Laporte stated that Mr. Panagary was always following their car, and following the family to places. She recalled that when she was working as a Quality Control Manager at the Chelle Medical Limited at Le Rocher, Mr. Panagary would follow her car all the way until she got to the gate. Ms. Laporte would drive in and there was a guard there after which Mr. Panagary was unable to follow her. Ms. Laporte claimed that she eventually asked her sons to drive her to work.

18. Ms. Laporte stated that she just got scared, and feared that next time it would be her sons that would be killed. She decided she had to move her family out of Seychelles. So she left with the whole family and immigrated to the United States in 2004 where she remains today. Ms. Laporte stated that after several years her oldest son Richard went back to Seychelles, but Richie still lives in the US.

19. Ms. Laporte informed the Commission that as the President had said "Come and see my Vice President" she tried to do so but she never got an appointment to go see Mr. Michel. She did not follow up with James Michel after he became President because she saw it was in her best interest to leave the case alone.

20. Ms. Laporte recalled that the lawyer that the Republic appointed was France Bonte, so Mr. Bonte was the representative for Mr. Panagary in the Republic vs France Panagary. But Mr. Panagary was acquitted. She stated that she went to the court but did not stay inside for long. It was too much to bear. The Judge hearing the case was Judge Alleear. Ms. Laporte recalled that there was evidence from a number of witnesses of the registration number of the taxi that was involved in the stabbing incident,

and that it was registered in the name of 'France Panagary'. She claimed that it could not have been anyone other than Mr. Panagary that had stabbed her husband and sons. The only people there were Mr. Panagary, her husband and her two sons. All of them were injured and she did not believe that they would have stabbed each other. Ms. Laporte stated that she also could not understand why Mr. Panagary was detained that same night, and then released the next morning.

21. Ms. Laporte informed the Commission that her family had no knowledge of Mr. Panagary prior to this incident. Ms. Laporte explained that she did not try to appeal the trial judgement because it was just a political case, and in Seychelles at the time it was a one-party regime. Ms. Laporte stated that here was nowhere to turn: she said, "If you tried to fight it, and next thing you know you would lose your son or your daughter, or your cousin, or another member of the family".

22. Ms. Laporte stated that she had questions about the Ministry of Health and potential negligence in that regard. She recalled her husband had been driven up to Anse Royale Hospital as soon as he was stabbed. Mr. Laporte received primary care at the clinic, but they could not control his bleeding. He was bleeding uncontrollably. They put him in an ambulance and sent him to Victoria Hospital. Her two sons stayed behind at the hospital and both had their wounds cleaned and received stitches. Her sons then drove back home and she took her younger children to her in-laws and drove down to Victoria Hospital only to find her husband alone in a room, still waiting for treatment. Ms. Laporte stated that she believed this was medical malpractice and negligence on the part of the Ministry of Health and the Hospital, and the staff members who took care of her husband that night. Ms. Laporte stated that they could have saved him.

23. Ms. Laporte informed the Commission that she did not know what the autopsy found because she was never provided a copy of the Autopsy Report. She knew that they had to cut his head open and she did not want to know any further than that. Ms. Laporte stated that the Hospital should be held accountable for their negligence as well.

24. Ms. Laporte stated that the other question she had was about the murder weapon. She stated that the court case never informed them as to what the murder weapon was. She informed the Commission that it must have been "something very deadly" to have cut through all the elbow bone. Her son Richie's arm was cut so badly and it was at an angle to his elbow. It was a very deep wound. Ms. Laporte stated that her sons were not even fighting, they were just defending their father. They saw him fall and they were approaching to give him support, and she was unsure as to whether it turned into a fight. She was not there but for Mr. Panagary to be able to defend himself with a deadly weapon like that against three men, she did not understand. Ms. Laporte queried why the Court case never identified the murder weapon and queried whether the weapon was also conveniently lost.

B. Richie Laporte (no transcript)

25. Richie Laporte appeared before the Commission on 17 January 2020.[4] Richie Laporte advised the Commission that on 31 December 2002, he went out with his father, his brother, his cousin and his brother's girlfriend. They noticed that a car had followed them from Providence. By the time they arrived at Katiolo, the car that had been following them swerved in front of them and stopped. His

[4] Hearing No. 40, of Friday 17 January 2020.

father got out of their vehicle to talk to the driver of the car. Richie Laporte then decided to go and see what was going on. He observed something shiny in the driver's hand and then the driver just took off.

26. Richie Laporte recalled that there were a couple of guys that were trying to get into the car and those guys tried to fight with them. Richie Laporte recalled that his brother had been pushed to the bottom of a slopel, where they built the butcher's shop, and that he had jumped over and got back into the car. Richie Laporte recalled that his father was sitting in the front seat and they moved him to the back seat. His brother Richard then drove to Anse Royale Hospital. Once there, the nurse told them that the hospital was transferring their father to Victoria Hospital. Richie Laporte recalled that he said that he would go with his father but was told that he needed to stay and have stiches for the injury to his arm.

27. Richie Laporte informed the Commission that the ambulance left with his father. He and his brother had their injuries treated and then they went home and told their mother what had happened. They went to Victoria Hospital and while there his mother went to see where their father was. She saw that there was no one with him. Then when she went back again, she saw there was a lot of commotion in the room where their father was. Then the nurse came and told them that their father was dead.

28. Richie Laporte recalled that they had left Katiolo to go to Providence and that the car of Mr. Panagary had followed them all the way there and all the way back. When they went into the neighbourhood of Providence the car still followed them and then followed them back to Katiolo. Richie Laporte recalled that when they went back to Katiolo they were on their way home. They lived at Pointe Aux Sel. Richie Laporte stated that Mr. Panagary's car cut them off after the bend. The car pulled "into the land to go to Katiolo parking area". Richie Laporte recalled his father was angry and went to speak to the driver of the car.

29. Richie Laporte advised the Commission that he received a 1 cm wound on his arm. Richie Laporte stated that when the incident happened, at Katiolo, it was in the parking area and he could see the features of Mr. Panagary.

30. Richie Laporte advised the Commission that his father was self-employed. He had a chicken farm and he was not involved in politics. He did not attend political rallies. Richie Laporte advised the Commission that as time went on they learnt that Mr. Panagary was a spy. He also recalled that Mr. Panagary used to come to the places where he used to hang out and he would come and sit at a distance and just smile. Richie Laporte claimed that Mr. Panagary tried to speak to them a few times. Richie Laporte informed the Commission that he had no idea why Mr. Panagary had been following them that night.

C. Richard Laporte

31. On 17 January 2020,[5] Richard Laporte appeared before the Commission in support of the complaint filed by his mother. Richard Laporte informed the Commission that on the evening of the incident, he, his father and brother were driving and it seemed that they were being followed. When they reached Pointe Larue, the vehicle that appeared to have been following them overtook them. When they reached Katiolo, the same car stopped and blocked the road. Richard Laporte recalled that he then got out of the car and a group of people came and attacked him. The group hit him in his neck, and they

[5] Hearing No. 40, of Friday 17 January 2020.

pushed him over the edge of the road. They then started bombarding him with empty bottles. Richard Laporte recalled that he was being held by someone when he observed his younger brother, Richie, jump and hit the person holding him. This caused the person holding Richard Laporte to release him. Richie them came to him and told him that their father had been injured.

32. Richard Laporte recalled that when he reached their car, he saw the car that had been following them leave. He also observed his father sitting in the driver's seat of their vehicle. He wasn't feeling well. He and Richie removed him and placed him in the back seat. Richard Laporte then drove to Anse Royale hospital and his father was taken inside. Richard Laporte recalled that after a while, they put his father in an ambulance and went to town. Richard Laporte stated that he insisted to go with him but the medical staff refused to allow him because he and his brother were also injured. Richard Laporte had been hit with empty bottles in his stomach. He had to stay there to have the wound stitched up and his brother had injuries on his arm that also required stitches.

33. Richard Laporte recalled that when he left Anse Royale Hospital, he went home to inform his mother about what had happened and told her to hurry and get ready to go to the hospital. Richard Laporte recalled that when they reached the hospital they were placed in a room. Richard Laporte asked to see his father but was told to wait. Time went by and they didn't hear anything. Then he went out and saw his father lying face up on a bed and no one was attending to him. This was very early morning. Richard Laporte recalled that it might have been around 6 A.M., when they saw the nurses running about and from where he was he could see his father fighting to breathe. After that, the hospital staff came to the family and told them that their father had passed away.

34. Richard Laporte recalled that when they left the hospital they went to the Anse Aux Pins Police Station. At the station, he gave a statement and he saw the perpetrator, Mr. Panagary, walk by with a policeman. Later that same evening, he saw Mr. Panagary on the road, driving. Mr. Panagary had been released. Richard Laporte claimed that after the incident they continued going out and around and there were a few places where Mr. Panagary harassed them. At that time a lot of people tried to calm him down to not do anything because the case was in court. Richard Laporte claimed that the case came to nothing, even after he gave evidence identifying Mr. Panagary. He walked free and that was it.

35. Richard Laporte stated that during an identification parade at the police station he identified Mr. Panagary very clearly. Richard Laporte was informed by the Commission that Mr. Panagary had admitted before the Commission that he had some relationship with state security. Richard Laporte was also informed that Mr. Panagary claimed that he had never met nor knew Richard Laporte but his wife may know him because there was an incident where Mr. Panagary's son was hit with a rock and his wife intervened. Mr. Panagary had alleged that Richard Laporte had said to his wife "Blood will spill just like the way your father did to my father".

36. Before the Commission, Richard Laporte denied that this was true. He stated that he rented a house in St Louis, and the two neighbours where he was renting had issues with each other. Richard Laporte stated that he was unaware that Mr. Panagary's wife or child lived there. He claimed that whenever he walked by the wife would insult him. He stated that he told the wife he wanted no problem with her and it was later that he found out that she was Mr. Panagary's wife. This was around seven or eight years ago. Richard Laporte claimed that the wife threatened him because he parked his car too close to the road and it blocked her way to the trash bin.

37. Richard Laporte recalled that he went to the police station to submit a statement, and he never spoke to that woman again. He never threatened Mr. Panagary's children and did not know them. Richard Laporte recalled that when Mr. Panagary was released from prison a friend told him that Mr. Panagary had sent a message for him but he did not bother with it. Richard Laporte advised that he had heard that Mr. Panagary had gone to prison for running over a tourist.

38. Richard Laporte noted that the police took no action in response to the statement he had given concerning this incident. They did nothing.

39. When asked to provide further details concerning the incident at Katiolo, Richard Laporte informed the Commission that the car that had been following them overtook them at Pointe Larue and when they got to Katiolo the car blocked the road. The traffic was stopped. There were no cars in front of that car and cars that were coming behind them had already stopped. Mr. Panagary had his indicator on. When Richard Laporte opened his car door and got out, he was beaten up. He left the car before Richie. There was also one of his cousins with them and he saw what happened. Richard Laporte explained that he opened the car door because he and his cousin were going to Katiolo and their father was dropping them off. But once he got out of the car, people started to hit him and that was when everyone else in the car decided to get out. Richard Laporte clarified that he had not seen his father get out of the car. When the people had finished beating him they pushed him down the edge of the road, into a ditch. Richard Laporte claimed that he was only able to get the name of one of the people who attacked him. His first name was Roddy, he was not sure of his last name, it could have been Victor but it was him and his group that attacked him. Roddy used to play in the St. Michel's football team and Richard Laporte was able to get his name.

40. Richard Laporte did not know why he was attacked. He was studying in the UK, and had just come back to Seychelles. He did not know the people who attacked him. He had never spoken to them. Richard Laporte only got the name of one of the attackers through his cousin. Richard Laporte claimed that the police never did anything in response to what had happened.

41. When Richard Laporte was questioned as to why they were being followed, he advised the Commission that people started to say a few things. It was said that his uncle had seen Mr. Panagary before. He was uncertain as to whether it involved a theft or something but there was an argument. Richard Laporte noted that his father and uncle often switched cars and he did not know whether Mr. Panagary thought it was his uncle in the car, which is why he followed them.

42. Richard Laporte advised that at the time his uncle, Franky Laporte, was working at a car hire with Mr. Yvon Marie or Mr. Robert Marie. He was unsure. Mr. Marie had a car hire and his uncle worked for them. Richard Laporte stated that his uncle was politically active as a democrat. He would go to the rallies but he would not be openly critical of the SPPF Government, as far as Richard Laporte was aware. Richard Laporte never asked his uncle if it may have been a case of mistaken identity between him and his father. Richard Laporte claimed that one of his cousins, Rival Andre, hired Mr. Panagary's taxi and that Mr. Panagary told his cousin that he had attacked the wrong person.

43. Richard Laporte clarified that earlier that evening they had dropped his girlfriend off at Providence before they headed to Katiolo. Richard Laporte also informed the Commission that there was a witness who had been standing across the road at the time of the incident and who observed everything.

However, he was uncertain as to whether he would be willing to come before the Commission and undertook to speak to him and inform the Commission thereafter.

44. Richard Laporte further recalled that Albert René had given his mother some money but they did not receive any additional help.

D. Daniel Valencia

45. On 22 July 2020, the Commission called Daniel Valencia who had been present with Mr. Laporte and his sons on the night of the incident.[6] Before the Commission, Mr. Valencia advised that he did not recall what day it was exactly, but he remembered it was an evening. He, Mr. Laporte, and Mr. Laporte's two sons had come from an outing. After the dinner they went to Katiolo. Mr. Laporte had left them there but then returned to pick them up after the disco. When they came from the disco, his cousin's girlfriend was with them, and they went to drop her in Roche Caiman. As they reached Pointe Larue, on the way home from Roche Caiman, they noticed a car following them.

46. Mr. Valencia recalled that then just a little bit further along they stopped and allowed the car to drive by. When they arrived near the Katiolo, the car just came to a halt in front of them, without signalling or anything. The car just stopped. In response, Mr. Laporte slowly stopped by the car and asked the driver if he could not signal and that was why he was stopping. The driver answered in a rude way, saying 'come and make me use my signals.'. They then stopped their car a little bit further in front of the stopped car and Mr. Laporte went to speak to the driver. When Mr. Laporte got out, his two sons went with him. Mr. Valencia also got out of the car. Mr. Valencia claimed that as Mr. Laporte was speaking to the driver, he saw Mr. Laporte stepping backwards as Mr. Valencia got out of the car. Mr. Valencia recalled that there was then a lot of commotion, that Mr. Laporte's two sons joined the fight and then he saw the car leave. When Mr. Valencia got to Mr. Laporte, he saw there was a mark on his stomach, and it was a blood stain. Mr. Valenica tried to help him and bring him to the car. He called to Mr. Laporte's two sons and said 'your father has been injured', and then they decided to take him to the hospital.

47. Mr. Valencia stated that he believed that Mr. Panagary carried a weapon in his car. He stated that when Mr. Panagary stopped his car in front of them, they did not have to stop. They drove past him and stopped a little further in front, the other lane had been clear at the time. Mr. Laporte just stopped to talk to him because he had stopped without indication and could have caused an accident. Mr. Valencia reiterated that it was the same car that they thought had been following them. He recalled that it all happened so fast. Mr. Laporte was talking with his sons, the vehicle seemed like it was following them, then they let that person drive past them. He drove in front of them and just stopped suddenly. It all happened fast. It was early in the morning, there was no traffic and it was not far from Katiolo. Mr. Valencia did not believe that Mr. Laporte knew the man in the car.

48. When asked who the two sons were fighting with, Mr. Valencia stated that there were people who were around and that they "interfered. There had been some kind of argument. Mr. Valencia thought it was the people who were at Katiolo, but he did not recall who these people were. They were hanging around outside of the disco. He just recalled that the car stopped and Mr Laporte got out of the car.

[6] Hearing No. 91 of Wednesday 22 July 2020.

When his two sons got out as well, these other people just came over and started fighting. When Mr. Laporte was talking to the driver of the car, the driver did not get out of the car.

49. Mr. Valencia stated that the people did not start fighting with him because of where he was, he had just got out of the car. He saw that Mr. Laporte was hurt and he went straight to him. Mr. Valencia stated that he then called the sons to inform them that their dad had been injured. Mr. Valencia recalled that Mr. Laporte had stood upright and it was as if he was fainting. Mr. Valencia went over to him, held him and directed him back to his car. It was then that he saw there was an injury on his chest. Mr. Valencia did not see the person in the car that Mr. Laporte had been talking to because he had left. Mr. Valencia claimed that Mr. Laporte's sons had talked to the person who stabbed Mr. Laporte. He didn't see the person in the car because Mr. Laporte's sons were in front of him and they were talking to the man in the car. Mr. Valencia stated that this all happened in front of Katiolo, at a bend in the road.

50. Mr. Valencia clarified that Mr. Laporte and his sons were talking to the driver and then other people interfered and that was when the sons left their father, that was when the incident happened. As the sons were dealing with these other people, their father continued to talk to the driver. They interfered with the other people, and that is when the incident happened. When he saw Mr. Laporte stand upright and fall back he got the attention of the sons, who were at that time fighting with the other people. Mr. Valencia stated that the only person who could have given Mr. Laporte the injury was the driver of the car. There was no one else there. Mr. Valencia informed the Commission that he was not asked to try and identify the driver and he was not called to testify in the court proceedings. He did go to the police station to make his statement but as he had not seen the driver of the car he could not identify him. With respect to the car the driver was in Mr. Valencia stated that it was a white car but he could not recall the model of the car. He could provide the license number: S12279.

51. Mr. Valencia informed the Commission that he had accompanied Mr. Laporte to the Hospital. He saw "just a little mark", a little wound on his chest. When they got to Anse Royale they sent Mr. Laporte to the Victoria hospital. Mr. Laporte was in the ambulance and then he went in the car with his cousins. They picked up Mr. Laporte's wife and went down to the hospital. When they got to the hospital, after some time, the doctor told them that Mr. Laporte had passed away. Mr. Valencia was shocked. He had not believed his injury was life-threatening.

52. When asked about the car following them, Mr. Valencia stated that it was Mr. Laporte who noticed the car following them and he told his sons. But then they did not discuss it because they stopped and allowed the car to drive past them. Mr. Valencia stated that he did not know why Mr. Laporte thought the car was following them. Mr. Laporte made no mention of who he thought may be in the car.

53. Mr. Valencia recalled that there was a day when he was on the beach with Mr. Laporte's sons a few months after his death. They met the person who they thought had killed Mr Laporte, and there were a lot of words exchanged. At that time, that man said to them that as long as the Government is in power, no one will be able to do anything to him. The man was France Panagary. Mr. Valencia recalled a later time, one morning when he was going to work, and he was waiting for his ride at the bus stop. Mr. Panagary drove straight at him on the bus stop as if to hit him with his car. Mr. Valencia went and reported the matter to the police. He gave a statement but he never heard a thing.

54. When questioned as to whether there was any reason anyone would want to harm Mr. Laporte, Mr. Valencia stated that he did not know. Mr. Laporte was not really politically active and he did not

believe he attended any political rallies. Mr. Valencia noted that Mr. Laporte was a frank person but he was not problematic. Mr. Valencia stated that he had never heard him speak against the Government.

E. Kevin Lablache

55. On 25 February 2022, a Commission investigator interviewed Kevin Lablache, having been informed by Richard Laporte that Mr. Lablache had been an eye witness to the events at the Katiolo disco on the night Mr. Laporte was stabbed. Mr. Lablache recalled that he was about 21 years of age at time, it was a long time ago. He remembered that either the disco was over, or that it was after midnight and he and a friend were leaving and looking for a taxi to go home. He recalled that as they were leaving there was a commotion outside the night club. There were youngsters who had had a few drinks and there was exchange of words. Mr. Lablache stated that he then proceeded to near the road to look for a ride. He was in the area where there is now a butcher's shop, just after the bend. He recalled that when he was standing by the road, he saw a car coming from Pointe Larue direction and there was a taxi behind that car and the taxi was hooting non-stop. The car in front was the car of Phillip Laporte. Mr. Lablache noted that the taxi only had to overtake Mr. Laporte's car and proceed, instead the taxi stopped and Mr. Laporte got out of his car to talk to the driver of the taxi. Mr. Lablache stated that he could see that they were exchanging words and later he just saw Mr. Laporte falling to the ground. Mr. Lablache stated that he could see Mr. Laporte was stabbed in his chest. Mr Lablache stated that he did not see the driver of the taxi when Mr. Laporte fell to the ground the taxi driver drove away, as it had all happened so fast. Mr. Lablache recalled that the taxi was white in colour. At the time he took the number plate but he has now forgotten it. He did not see the face of the taxi driver. Mr. Lablache claimed that he was left scared by what he had witnessed.

56. Mr. Lablache stated that it was only years later, when he met Richard Laporte by coincidence at Beau Vallon Beach, that he found out he was the son of Phillip Laporte. He knew Richard from NYS and they were of the same age. During their conversation, Richard was telling Mr. Lablache how Mr. Panagary stabbed his father near Katiolo area for no reason whatsoever and that Mr. Panagary was never sentenced. Richard Laporte also mentioned to him that justice was never served for the family.

57. Mr. Lablache stated that his immediate reaction, was to tell Richard that he was sorry, he had been present on the night of the incident and he had seen what had happened. Mr. Lablache told Richard that he felt bad about not saying anything previously.

F. Rival Andre

58. On 23 February 2022, a Commission investigator interviewed Mr. Rival Andre with respect to the claim that had been made that after the incident, Mr. Andre had hired the taxi of France Panagary and that Mr. Panagary had told him that he had stabbed the wrong person. Mr. Andre informed the Commission that the day after the stabbing he heard the family crying and talking about the incident and what had happened. He said it was about "Popo"—Phillip Laporte—who had died near Katiolo and that he had been stabbed with a screw driver in his chest by a France Panagary. Mr. Andre recalled that Mr. Panagary was locked up for a day and then released and when the court hearing happened he was released. Mr. Andre stated that that was all he knew.

59. When asked whether he associated with Mr. Panagary, Mr. Andre stated that he did not. He recalled that one day, it was very late and he wanted to get home. There was no transport, but he saw a vehicle at the Chez Denu taxi stand. It was Mr. Panagary and Mr. Andre asked him if he was doing pirate taxi and he told him yes. Mr. Andre asked Mr. Panagary to drop him home, but this was long after the incident. Mr. Andre stated that he knew that Mr. Panagary was the man who had stabbed Mr. Laporte, but claimed that they did not discuss that incident when he took Mr. Panagary's pirate taxi. Mr. Andre also stated that he had heard that Mr. Panagary used to spy for the SPPF government. Mr. Andre denied that Mr. Panagary had ever told him that he attacked the wrong person the night he stabbed Mr. Laporte. Mr. Andre stated that this information that had been given to the Commission was not true.

G. Wilby Lucas

60. On 23 July 2020, the Commission received a letter from Mr. Wilby Lucas, which stated as follows:

> I have the opportunity to view the testimony of the witness who appeared before the Commission yesterday and it is my observation and conclusion the death of Mr. Laporte was politically motivated, perhaps yes, but let me appraise the Commission this incident went through the normal investigation process whereby the culprit was prosecuted before the Supreme Court for Manslaughter.
>
> The incident took place on Saturday night in the vicinity of Katyolo Night Club and the suspect was arrested the next morning, his car was also seized and kept in Police custody. Investigation was taken over by the Criminal Investigation Department. During the process of investigation Police held an identification parade whereby one of the sons of the Deceased who were with him at the time of the incident, identified the suspect from the panel as the guy who wounded his father, he was remained (sic) in custody under remand until trial. I was the one who was assigned to prosecute the case in my capacity as State Counsel in the Attorney Generals Chambers then and Mr. Anthony Fernando who was the Attorney General. During the preparation of the case we held meetings with the wife of the Deceased and his sons mainly on the issue of identification whereby I have the guarantee the youngest son who was the main witness will be able to maintain his position to identify the accused in court.
>
> The case was tried by the then Chief Justice Alleear, but sadly the accused was acquitted on the (sic) a "No Case To Answer" submission on two issues:
>
> (a) There was poor lighting reflection around where the incident took place
>
> (b) The youngest son was so scared of the accused and could not confirmed (sic) in court that he was the one whom he witnessed arguing with his father as the driver of the white car.
>
> At this time we have not yet introduce Video Link procedure for witness to give evidence outside the court room.
>
> It is worth mentioning in our Criminal Justice System the right of appeal only apply (sic) to an accused person but the State can only use the procedure to revise a Sentence before the higher court. The Deceased (sic) family would always have another alternative to bring a civil case against the accused in the same manner as the case of OJ Simpson ended where the burden of proof is based on a balance of probabilities and not beyond a reasonable doubt which I believe their Lawyer Mr Bernard Georges advised them to take this course of action but they declined.

> You may called (sic) for the file from the Police or from the Court where the Commission can have this information.

H. Court Proceedings

61. On 30 October 2019, the Commission requested through the Registrar of the Supreme Court access to the record of court proceedings in relation to the death of Mr. Laporte. The Commission received no acknowledgment or response to that request. The Commission reiterated that request by letter dated 22 November 2019, and again on 18 December 2019, yet received no response. Again on 8 January 2020, the Commission reiterated that response to the Registrar and yet received no response. Notably, the Commission had been instructed, at the start of the mandate, by the Registrar to direct its requests for information to her. On 11 February 2021, the Commission directed its request to a staff member at the Court and on 22 March 2021 the Commission finally received the judgement requested. The Commission did not receive the trial record, but this was provided to the Commission by Mr. Wilby Lucas.

1. Trial Record

62. Mr. Panagary was charged for manslaughter contrary to Section 192 of the Penal Code and trial proceedings commenced on 9 January 2001.

i. Richard Laporte

63. In his evidence before the court, Richard Laporte informed the court that on 29 December 2000, he went out with his father, Philip Laporte, his brother Richie Laporte, cousin Daniel Valencia, and his girlfriend Juliette. After they went out, they took his girlfriend to her home at 3.30 A.M and then returned to Katiolo. His father Philip Laporte was driving the car. Richard Laporte informed the court as follows:

> While negotiating the bend at Katiolo, a white car, registration No. S 12279 applied the brake so suddenly in front of us without putting signal indicator.[7]
> We approached him and parked by his side and we blocked the whole road because he had already parked his car on the edge of the road at Katiolo. My father was talking to him telling him if he could not put his indicator light on. He was saying something which I did not catch. We stopped a little in front of his car and we came towards him. [...] One thing that I heard is that the driver of taxi S 12279 said if you want to fight come out and we will fight. We told him that we had not come to fight. We told him the same thing and the other group was shouting leave that taxi driver alone. At the same time I had already seen that taxi driver. If you ask me to identify him I will do so. At the same moment I was talking to the taxi driver, I was involved in another fight and at the same time somebody threw a bottle at me. [...] It just happened that I was attacked, somebody was hitting me on my neck, that was by another group of persons. When it was about to end, somebody said

[7] On 24 July 2020, the Commission sought access to the registered owner of license plate S12279 but the investigator neglected to specify the year of ownership the Commission was interested in. While the Commission received a response to that request on 6 August 2020 it did not contain the information required by the Commission. The Commission clarified its request by letter dated 11 August 2020 specifying that it was interested in registered ownership in the year 2000. By letter dated 20 August 2020, the Licensing Authority informed the Commission that vehicle S12279 was registered to Mr. France Panagary in the year 2000 and provided the Commission a copy of the vehicle registration form.

Roddy move aside. At the same time I was pushed over the wall. I heard that the white car S12279 started its engine to go off.
The engine of the car was not off and at that time I was about to go and at that time I was just looking around to see if my father was around. I turned around, I was looking at his car and I noticed that it was smoked screened. The only thing that came into my mind was to take the registration number of his car so that in case I don't find my father, I will be able to follow this car. At the same time, I turned around I was pushed over the wall by these people.
[...]
No, I could not identify them but I heard one of his friends calling his name. I even got hold of one of the colleagues and we fell over the wall and I got the chance to turn him down and I fell over him. When I realized there was light down there, I was strangling him, I removed my hand, I lifted him up like this and said to him I have not come here to fight.
When I got up he just pushed me towards the terrace. At the same time his friend said Roddy move aside and I will hit him and there I was hit in my tummy and the scar is still there. My brother was coming over to jump down and he was about to throw a bottle at that person.
That person who kicked me was about to pick up another bottle when my brother saw him. My brother coming from above jumped on him and hit him. My brother Richie Laporte came and said a bad word to me which I am not going to repeat before the court. He said Richard let's go because my father Philip Laporte had been wounded. At that time I was not paying attention to what he was telling me.
I said to him wait, I will find my shoes because it has come off my foot, one of my rings had also come out from my finger. He said Richard there is no time, let's go and then he pulled me up. At the same time I noticed that there was a wound on his left arm. I came up and when I reached the car I found my father sitting at the steering wheel. I opened the back door where I was seated and said dad let's go.
My brother told me that my father had been wounded and he said that to me a second time. I opened the door of the car and came out of the car. I opened the driver's door, I just touched him and I found him falling out of the car and I tried to help him. At that time I could not tell what had happened to my father. I was just shouting help me and I will put him in the back seat of the car.
[...]
Arriving at Anse Royale Hospital I asked for the assistance of the nurses and the doctors who were present. I carried him inside to a bed where the nurse told me not to put him on that bed but on the other one.
[It was] between 3.30 and 4 am. When inside I noticed that there were punctured wounds on his chest. He was gasping for breath. There was a gold chain on his right arm and the nurse was asking me if I could remove it. I removed it and put it in my pocket. I was a bit nervous because I was not receiving the assistance required.
I was inside and I saw. At that time there was a nurse and a doctor with us, that is why I am saying I did not get assistance.
[...]
If my father was gasping for breath and my brother was bleeding, I saw the wound opened, I thought I would receive the assistance for the two of them. I did not know what could happen with them if they were not receiving the assistance from the nurses".

Mr. Richard Laporte stated that it had taken him about five minutes to reach the hospital and that his father remained there for 5 to 10 minutes prior to be taken to town.

When Mr. Laporte was asked to provide details about his ability to identify the taxi driver he advised that he had spoken to the driver from the driver's side. The window was open and the passenger seat was empty. He could not state if there was people sitting in the back of the taxi. They spoke for a few minutes and he saw the driver. He was very close, about two feet away from him. He further claimed that the street was lit.

Mr. Laporte also provided evidence about what happened once he and his mother arrived at Victoria hospital:

> Arriving at the Victoria hospital, I asked a nurse [...] I was told that my father was at the D'Offay Ward. I was a bit proud and I said to myself that he had been taken care of but when I reached upstairs, I noticed the nurses moving about quickly and he was gasping for breath. I asked for me to go in together with him and they refused.
> [...] we were placed in another room to sit and wait. After sometime they came and told me I have lost my father. I called Franky Laporte, the brother of my father and told him that his brother had been injured and I did not tell him exactly what had happened.
> [...]
> My Uncle Franky Laporte told us let us go home. Arriving home my uncle was talking to me telling me if I could identify that person. I replied yes and I even remember the registration number of his car and I gave him the registration number of the car. After some time he gave me the name.
> [...]
> I wrote the number and the name on a piece of paper with a pencil and I gave it to the police at Anse Aux Pins Police Station.
> [...]
> I gave details similar in a statement at Anse Royal police station and at Anse Aux Pins I have a full statement.

64. Mr. Laporte further informed the court that at the time of the giving of his statement he provided a description of the perpetrator. Over the objections of Defence Counsel Mr. Laporte repeated the description he had earlier given "A black man, reasonable build, I could say that he has shaven his hair, that's all".

65. Mr. Laporte confirmed that he had also attended the scene of the incident with the police the day after the incident on 30 December 2000. He further confirmed that he attended an identification parade at the police station perhaps three days after the incident and he identified the accused as the perpetrator during that identification parade at the central police station. He further made an in-court identification of the accused.[8]

ii. Richie Laporte

66. Richie Laporte's evidence before the Court was that on 29 December, he was at Katiolo with his father Phillip Laporte, his brother Richard Laporte, his cousin Daniel Valencia and the girlfriend of his brother Juliette. They stayed there until 3 A.M. and then they took Juliette home to Plaisance. From Plaisance they were going home. When they reached Point Larue they were overtaken by a white car. Mr. Laporte was driving their car and Richie Laporte was sitting in the front seat. When they arrived at Katiolo, the same white car applied its brakes suddenly in front of them, drove to the side, and then put his indicator on. There were other cars behind them hooting their horns and Mr. Laporte drove his car in front of the taxi and stopped. They got out of their car and went to talk to the taxi driver. Philip Laporte was talking to the driver and Richie Laporte was looking at the white car. There was a mark in the mudguard in front close to the headlight. Richie Laporte stated that there were two other persons at the side of the taxi outside and they asked them if they were coming to fight the taxi driver. Richie Laporte recalled that his brother responded, "no", they were just talking to the driver and he did not know what happened after that. He stated that:

[8] The Republic v France IRené Panagary, Criminal Side 1 of 2001, Sitting of Friday 9 March 2001 at 9am before Lordship V. Alleear – Chief Justice assisted by J Simeon the undersigned Court Reporter.

> At that time my father was still talking to the taxi driver and suddenly I saw the driver opening the door of his car and my father stepped behind.
> [...]
> I was in front of the mirror.
> [...]
> [...] My father stepped a little behind. I went to lean my hand against the taxi driver when I felt a cut on my arm.
> The taxi driver [had inflicted the injury]. I turned round to look at my father, when I turned round to see the driver again he had already gone in his car. My father told me that he had been stabbed, he showed me the mark at his chest. We took him up to the car.
> I looked for my brother, shouted for him. When I was walking I found him on the other side of the terrace. Somebody was holding his hands behind and saying to the other friend to hit him with that bottle. When I came I saw that man, he was going to pick up another bottle to hit him with. I jumped and hit him.
> After hitting him, I saw no one, the car had already gone. I said to my brother let's go, he said no I am looking for my ring and shoes. I told him that my father had been stabbed, he said let's go. When we reached the car my father was sitting at the driver's seat.
> [...]
> He was unconscious, his head was leaning against the seat.

67. When he was taken back to the incident at Katiolo, Richie Laporte testified as follows:

> My father was complaining about the sudden brake. The taxi driver said he would alight from the car to fight. My father said no, we will not fight, let's finish talking. It was at that time when the two other gentlemen said to my brother if he was going to fight the taxi driver.

68. Richie Laporte further advised the court that he had been very close to the taxi driver, about two feet but even though there was light he could not identify him. When the taxi driver stepped out of the car, there was just himself and his father and no other people around. In response to a question as to whether he saw who wounded his father, Richie Laporte responded it was the taxi driver. He stated that he gave a statement to the police on 30 December 2000 and went with the police to the site of the incident. Richie Laporte further stated that he had seen the taxi driver raise his arm and that there was a light close by. He also stated that he attended the identification parade but did not say anything, he told the police he did not recognise the perpetrator. He informed the court that "in my mind I knew but I did not tell". On cross-examination, Mr. Laporte stated that he did not see anything in the taxi driver's hand.[9]

iii. Daniel Valencia

69. Daniel Valencia recounted the story of going to Katiolo and leaving at around 3 to 3.30 A.M. to drop the girl that was with them to Roche Caiman. Mr. Valencia stated that Mr. Laporte was not drunk and he had not seen him drinking. He stated that when climbing a slope at Pointe Larue, they were about to go down to Katiolo. He was seated in the back behind the driver. There was white car going in front of them and before reaching the drive way leading to the Katiolo the driver of that white car applied his brakes fiercely, without indicating. Mr. Laporte also braked suddenly. Then Mr. Laporte drove abreast to the taxi drivers care and asked him whether or not he could indicate before stopping. Mr. Valencia did not recall what the driver responded. Then Mr. Laporte moved his car and stopped it in front of the taxi so as not to block the traffic that was behind them. They all got out of the car and went

[9] *Id.*

towards the taxi car. Mr. Laporte was talking to the taxi driver through his open driver side window. Mr. Valencia was standing behind the sons of Mr. Laporte who were standing behind their father. Mr. Valencia recalled that as they were talking to the driver a group of five men came out from Katiolo and were walking up the road. They shouted at them to leave the taxi driver alone and Richard Laporte went to speak to the group of men. The group of men moved towards Richard and wanted to fight him. Mr. Valencia then moved towards Richard's direction, leaving Mr. Laporte and his son Richie with the taxi driver. Mr. Valencia stated that:

> When I turned around, I noticed that the door of the taxi was partly opened. I noticed that that person was pushing him and Phillip was stepping a bit behind. Then I heard the car starting and going away.
> [...]

70. Mr. Valencia further stated that while he had a glimpse of the taxi driver he did not 100% recognise him. He was at the rear of the car, about five feet away. There was a light by the side of the road. After the taxi driver left, he did not look at Mr. Laporte because he was focusing his attention on Richard, who was fighting with five other men. He recalled then when he looked and saw Mr. Laporte he was sitting in the driver's seat with one of his legs outside; he had leaned against the seat of the car and he was gasping for breath. They removed him to the back seat and took him to Anse Royale Hospital.[10]

iv. Benjamin Zab

71. Police Inspector Benjamin Zab attached to the Traffic Section of the police force gave evidence concerning the identification parade that took place at Central Police Station. He stated as follows:

> The first witness was called in, Richard Laporte, I explained to him the procedure, that there was a lineup of nine person (sic) and that he was to look at them as (sic) see if he can identify anyone of them. And that he is not allowed to talk to any of them. He went to the lineup where the persons were and the accused Panagary was one of the persons on the line. He went straight to France Panagary and said "there he is, that man". Then I asked him if he was sure and he said yes. And then he was taken out and kept in the CIU office and he was not allowed to communicate with any of the three remaining witnesses. Next the second witness Richie Laporte was asked to come in.
> [...]
> [...] Before the second one came he changed his position and he stood between the second and third persons on the line
> [...]
> He went to the line and he looked at the persons and said he could not identify anyone. The third witness, Daniel Valantia also came, same procedure and he said he could not identify anyone. The fourth witnesses (sic), Noella Venda, same procedure and he said he could not identify anyone.[11]

2. Medical Evidence from the Trial Record

i. Dr. Ernesto Paul

72. Dr. Ernesto Paul, Senior Medical Doctor of Anse Royale Hospital gave evidence that he was working at Anse Royale Hospital in December 2000. He was the treating doctor of Mr. Laporte in the early morning of 30 December 2000. His evidence was given from memory following an objection that was

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[10] *Id.*

[11] The Republic v France IRené Panagary, Criminal Side 1 of 2001, Sitting of Monday 8 March 2001 at 9am before Lordship V. Alleear – Chief Justice assisted by Stella Napier the undersigned Court Reporter.

upheld by the Judge to his refreshing his memory from notes made three days after he had treated Mr. Laporte. Dr. Paul recalled that he saw Mr. Laporte at 4.25 am and did the physical examination. Dr. Paul stated:

> [...] At the beginning of the examination I note two stab wounds on the chest. One, I think the more important was around 2.5cm and another smaller one in the right side near the shoulder. The cardiac sound, breathing was a bit low and weak. The lungs were transmitting sound. The abdomen was soft. The patient was alert and a bit agitated. There was no external bleeding. I wrote everything in a book at the same moment. This is the procedure here. The medical report that I made three days later I had to copy the same information from the book to the paper.
> [...]
> The patient was very sick, I only covered the wounds and send him to Victoria Hospital.
> Dr. Paul's evidence was that the patient would have arrived at Victoria Hospital within half an hour.[12]

ii. Dr. Moataz Elkahaldy

73. The evidence of Dr. Moataz Elkahaldy was that Mr. Laporte was referred from Anse Royale Hospital, he had sustained a stab wound at 4.30 A.M. and they received him on D'Offay ward at 5.30 A.M. According to Dr. Elkahaldy, Mr. Laporte was "restless, very aggressive under alcohol influences with a serious physical injury and irreversible shock, with 2 penetrating wounds, one over the center of the chest above the xiphisternum and the other one on the upper right of the chest". Dr. Elkahaldy stated that he needed immediate resuscitation and CPR, and went suddenly into respiratory arrest. He died at 6.12 A.M., and a post mortem was requested.

74. On cross-examination, Dr. Elkahaldy stated that he attended the patient at 5.30 A.M., but did not know the time exactly when the nurses received the patient from the ambulance. Dr. Elkahaldy informed the Court that Mr. Laporte was suffering from serious injury with irreversible shock. They had tried to stabilise the patient; he had a massive hemothorax, and he suddenly went into irreversible shock. He informed the Court that he could not take Mr. Laporte to theatre to try and stop the bleeding without stabilising him first.[13]

iii. Pasupathi Meenakshi Thankikachalam

75. The evidence of pathologist Pasupathi Meenakshi Thankikachalam who performed the post mortem was that Mr. Laporte had died around 6.20 hrs. on 30 December 2000. He provided the court with his findings on the postmortem examination:

> To give the features of the external and internal examinations. On external examination the following two injuries were noted, both on the chest cavity. There was one penetrating wound 1.5 to 0.4cms situated 3cams below the neck just above the area called...this was situated in the right side of the chest cavity. Another wound also penetrating in nature similar to the previous one was situated over the right shoulder just 7.5cm below the joint, situated on the pectoralis muscle. These were the two penetrating injuries noted. There were no other injuries. There was what we call bluing of the nails due to lack of oxygen.

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[12] Ibid.

[13]The Republic v France IRené Panagary, Criminal Side 1 of 2001, Sitting of Monday 12 March 2001 at 9am before Lordship V. Alleear – Chief Justice assisted by J Simeon the undersigned Court Reporter.

> Internal examination, the right lung was completely collapsed and there was accumulation of blood and blood clots in the right chest cavity. The blood clots measured about 360 ml and fresh blood measured about 830 ml so altogether it was more than one liter of blood in the chest cavity.
> The penetrating injury the first one which I said was situated in the neck and caused injury on the blood vessels just above the apex of the lung causing the bleeding. This injury I noted had penetrated down into the chest cavity and caused injury to the smaller blood vessels following which bleeding occurred.
> The other penetrating injury which was on the chest did not enter the chest cavity it had just caused injury to muscles. There was no injury to the heart or other organs. There was no injury to the major blood vessels. Those were the injuries noted internally.
> The other organs appeared normal except for some fatty changes. The stomach contained digested food mixed with bile, the greenish liquid. In this particular case the cause of death has been due to massive internal bleeding, what we call hemothorax. This massive hemorrhage has been caused by this penetrating injury of the smaller blood vessels. That is all.
> The pathologist stated that it would have had to be a sharp instrument or even a toothpick that caused the injuries as they were just 1.5 to 0.5 cm. Anything that was small but sharp enough. Upon cross-examination the pathologist stated that there were about 1.2 liters of blood and judging from the size of the wounds it would have taken more than six, even ten hours for that amount of blood to accumulate and cause death. The pathologist stated that the injury was not immediately fatal but this injury though small because of the continuous oozing of the blood it became fatal. The pathologist further confirmed that if the puncture was treated in time it would have saved the life of the person. The pathologist estimated that an intervention after the injuries within a period of three to four hours would have saved the life of Mr. Laporte.[14]

3. No Case Submission

76. Following the close of the prosecution's case, Mr. Bonte filed a no case to answer submission on behalf of his client.[15] Mr. Bonte submitted before the Court that it was not denied that an incident did happen at Anse Faure in the vicinity of Katiolo nightclub. Mr. Bonte stated that the identity of the victim is not denied. However, the accused denied that he was there, and according to Mr. Bonte the only decision of the Court to decide was whether he was there and whether he did the act complained of.

77. Mr. Bonte claimed that the evidence adduced did not establish that his client was responsible. He claimed that Richard Laporte, who identified the accused, did not see the accused do anything. The second witness, Richie Laporte, did not identify the accused in the ID parade or in Court. He also did not see the accused hurt his father with anything in his hand. The third witness did not see his client do anything and he could not identify his client. Mr. Bonte stated that the main witnesses who were supposed to say it was his client who did it failed to do so. Mr. Bonte's client was only identified by one witness in the police identification parade but this witness could not say he saw his client do anything. Mr. Bonte claimed that it was a question of identify and the statement of his client that was presented to the court was that he was not there. Mr. Bonte claimed that the evidence of the prosecution presented in the case corroborated his client's statement that he was not there.[16]

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[14] The Republic v France IRené Panagary, Criminal Side 1 of 2001, Sitting of Thursday 8 March 2001 at 9am before Lordship V. Alleear – Chief Justice assisted by Stella Napier the undersigned Court Reporter.
[15] The Republic v France IRené Panagary, Criminal Side 1 of 2001, Sitting of Wednesday 14 March 2001 at 9.30 am before Lordship V. Alleear – Chief Justice assisted by J Simeon the undersigned Court Reporter.
[16] Mr. Bonte also referred to the evidence of the pathologist that it would take between 6 to 10 hours for the 1.2 liters of blood to have accumulated and caused the death of Mr. Laporte. Mr. Bonte stated that as none of the witnesses could give evidence of an assault on Mr. Laporte, coupled with the evidence of the pathologist, the unlawful acts must have been done earlier. Mr. Bonte claimed that they did not have the time when the incident happened, they have the

78. In response to the central challenge of identity, Mr. Lucas for the prosecution submitted that in his statement, the accused had stated that his car was coloured white and its registration number was 12279 and that he was a taxi driver. While the accused had raised the defence of alibi, there was no evidence that that car on that day had been reported stolen or borrowed by someone else. In his statement the accused had said that on 29 December he was working in his taxi and he was travelling in different routes, including Anse aux Pins. He also stated that he was working until later the next morning the 30th December. Mr. Lucas noted that the evidence of Richard Laporte placed the defendant and his car at Katiolo in the vicinity of the alleged crime. Richard Laporte confirmed that it was the defendant who was in the car. He claimed that he did not witness any stabbing but the taxi driver was the one on the scene. There was another witness who stated that the taxi driver was talking to Mr. Laporte while Richie Laporte was there.

79. Judge Alleear clarified with Mr. Lucas that his submission was that one of the prosecution's witnesses identified the person who caused the injury as the accused. As he summarised, the submission was that "the person who identified the driver did not see the assault take place. The person who saw the assault take place did not identify the driver". Mr. Lucas confirmed and submitted that in terms of the chain of circumstantial evidence, the court can properly infer that the taxi driver was the defendant and on the basis of the evidence of Richie, he was the same person who subsequently opened the door of the taxi and made a gesture with his arm. Richie was injured on his arm and just after the taxi driver suddenly took off, the father said he had been stabbed. Mr. Lucas stated as at that time there were just the three of them: Richie, his father and the taxi driver. He said the court could infer from that evidence.

80. Mr. Lucas noted that the evidence of the pathologist was that the injury could have been done by a toothpick, and that it would be easy for someone to conceal this into his hand and cause injury without someone nearby noticing. Mr. Lucas submitted that the prosecution did not have the "evidence of an eye witness to prove that the defendant physically injured the victim but all of the evidence put together" led to the inference that at the time of the injuries, the defendant was there, he was alone with the father and son, and no other person could have inflicted the injury.[17]

4. No Case to Answer Ruling

81. The ruling on the submission of a no case to answer was made by Judge Alleear CJ on 19 March 2001. For the purposes of this determination that ruling is set out in full:

> Alleear CJ
>
> After the close of the prosecution case, Mr. Bonte on behalf of the defence made a submission of a no case to answer.
>
> The basis of his submission is two-fold, (i) that no prosecution witness saw who had assaulted the victim; (ii) the poor quality and highly suspect identification evidence. Hence, according to Counsel

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time they reached Anse Royale but not the time they reached Victoria hospital, only the time when the victim reached D'offay ward.

[17] The Republic v France IRené Panagary, Criminal Side 1 of 2001, Sitting of Wednesday 14 March 2001 at 9.30 am before Lordship V. Alleear – Chief Justice assisted by J Simeon the undersigned Court Reporter.

a conviction based on same would be dangerous and no reasonable jury, properly directed, would convict the accused.

Mr. Lucas submitted that there was sufficient evidence adduced by the prosecution to establish a prima facie case requiring the accused to make a defence. He said (i) there was an unlawful act as a result of which the victim, Philip Laporte, died; (ii) the accused was identified at the scene and at the identification parade by one Richard Laporte as the driver of the taxi registration No. S12279 and (iii) the prosecution has adduced sufficient circumstantial evidence to link the accused to the offence.

It was held in the case of R v Stiven SLR No. 9 of 1971 that a submission of no case to answer may properly be upheld (a) when there has been no evidence to prove an essential element of the offence charged, or (b) when the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

The evidence led by the prosecution in this case shows that on the 30th December 2000, between 3.30 and 4 am an altercation ensued between the deceased, Philip Laporte and the driver of the vehicle registration No. S 12279 at the entrance to the driveway of Katiolo night club after the former complained of a piece of bad driving on the part of the taxi driver. Philip Laporte was on his way home to Anse Aux Pins in his vehicle from Roche Caiman. He had to brake and stop his vehicle suddenly behind the taxi car because the driver of the said taxi stopped unexpectedly at the entrance of the said drive way without indicating to do so. Philip Laporte and three young men came out of the car to talk to the driver of the said taxi car. There was a group of about four men by the roadside at that time. They got involved in a fight with Richard Laporte after an empty bottle was thrown at the latter.

Apart from identifying the driver of the taxi as the accused and picking him out in an identification parade, Richard Laporte did not witness anything that happened between the deceased and the driver of the said taxi car.

Richie Laporte was in front of his father, Philip Laporte as they argued with the taxi driver. Richie Laporte received an injury when the driver of the taxi car assaulted him with a sharp object on his forearm. Richie Laporte could not identify the driver of the vehicle. He did not see who assaulted Philip Laporte. In fact no one saw who had assaulted Philip Laporte but Richie Laporte heard his father say – "I have been stabbed". By whom, no one knows.

At an identification parade held on the 3rd January 2001, out of four witnesses for the prosecution, three of them, namely Richie Laporte, Daniel Valencia and Noella Venda, failed to pick out the accused.

After receiving his injuries, Phillip Laporte was taken urgently to Anse Royale Hospital. He arrived there at around 4.25 am. After examining him, the doctor noticed two stab wounds, one in the middle of the chest below the neck and one below the right shoulder. Philip Laporte was transported with urgency to Victoria Hospital in an ambulance.

Dr. Moataz saw the victim at 5.30 am in D'Offay Ward. He examined him and noticed that he was very agitated. The doctor tried to calm him down before he could be taken to the theatre. Resuscitating measures were attempted without success. Philip Laporte sadly passed away at 6.12 am.

According to the Pathologist, the stab wounds were not grievous in nature. They could have been caused by a sharp pointed object such as a tooth pick, he said. The latter testified that there was no damage to important blood vessels. However, he noticed accumulation of 1.2 liters of blood in the lungs of the deceased. The injuries according to the doctor were not necessarily fatal.

The accused is charged with the offence of manslaughter contrary to Section 192 of the Penal Code. Manslaughter is ordinarily categorized as either voluntary or involuntary.

1. Voluntary Manslaughter – this is when all the elements of the crime of murder are present including the intention to kill or cause grievous bodily harm, but the crime of murder is reduced to manslaughter by reason of (a) provocation; and (b) diminished responsibility, etc.
2. Involuntary Manslaughter – this is unlawful killing without intent to kill or cause grievous bodily harm (See Taylor v R 1834 2 LEW 215)

The following propositions have been gleaned from the numerous cases on involuntary manslaughter. A killing is manslaughter if it is either (a) the result of a grossly negligent act though it may be otherwise a lawful act or omission on the part of the accused; (b) the result of his unlawful act where the unlawful act is one such as an assault which all sober and reasonable people would inevitably realize must subject the victim to the risk of harm resulting therefrom albeit not serious harm, whether the accused realized this or not. (Andrews and DPP).

Mens rea is an essential ingredient of the offence of manslaughter. There must be an intention on the part of the accused to at least commit an assault on the person of the victim.

The prosecution case hinges as stated earlier on circumstantial and visual evidence. Before a conviction can be based on circumstantial evidence, the trial court must direct itself that the inculpatory facts are inconsistent with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. Before drawing an inference of guilt from circumstantial evidence, the trial court should ensure that there were no other co-existing circumstances weakening or destroying the inference of guilt (vide: Onezime v R 33 SLR 1978).

In the present case nobody saw who inflicted the fatal injuries on the victim. There were two incidents that night. A group of persons of about four men were fighting with Richard Laporte at almost simultaneously as an argument was going on between the deceased and the driver of vehicle S12279. Could it be that the fatal blows were inflicted on the victim by someone other than the driver of the said vehicle? The answer to the above question will remain forever unanswered.

It will be recalled that the accused in a statement given to ASP Banane admitted that he is the owner of vehicle registration No. 12279. However, he denied that at the material time he was in his taxi car at the Katiolo at the time when the deceased was fatally struck.

When the defence raises the defence of alibi, it is incumbent upon the prosecution to adduce sufficient evidence to show beyond a reasonable doubt that the alibi evidence is false. In the present case, the prosecution could have led evidence to show that no report had been made that the said vehicle had either been reported missing or stolen. In the absence of such evidence, the alibi defence raised by the defence remains uncontroverted.

Whenever the case against an accused person depends wholly or substantially on the correctness of one or more identification of the accused which the defence allege to be mistaken, the judge should warn the jury or himself of the special need for caution before convicting in reliance on the correctness of the identification.

The judge should point out that a mistaken witness could be a convincing one and that a number of such witnesses would all be mistaken. Secondly, the judge should direct the jury to examine closely the circumstances in which the identification of the accused by witnesses came to be made. For instance, how long did the witness have the accused under observation, at what distance, in what light, was the observation impeded in any way such as by-passing traffic or press of people, had the witness ever seen the accused before, how long had elapsed between the original observation and the subsequent identification of the accused to the police. Recognition might be more reliable than identification of a stranger.

> In the present case the only person who identified the accused as the driver of the taxi car was Richard Laporte. The driver of the taxi car had never come out of his car and the lighting condition was poor. The only light was from a lamp post many feet away. Within seconds of Richard Laporte approaching the taxi car he was set upon by the said group of men. The identification of the person in the taxi vehicle lasted for few seconds only.
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> Although I bear in mind that there is no requirement in law for the evidence of a single witness as to identity to be corroborated, I believe no reasonably (sic) jury properly directed would convict the accused on the evidence of identification in the case, if they bear in mind the Turnbull guidelines.
>
> Secondly, in the absence of evidence as to who had inflicted the fatal blows, I find that there is doubt as to the author of the actus reus of the offence. The circumstantial evidence does not lead irresistibly to the accused person's guilt. In the circumstances, I have to rule that the submission of no case to answer succeeds. I accordingly dismiss the case and acquit the accused of the charge of manslaughter.

I. France Bonte

82. On 7 February 2022, the Commission investigator sought to interview Mr. France Bonte, the lawyer who had represented Mr. Panagary. The Commission was aware from evidence it had received in other cases that Mr. Bonte was a strong SPPF supporter. It was also aware of allegations that had been made concerning Judge Alleear and in particular that he would issue judgements to please the executive.

83. The Commission investigator telephoned Mr. Bonte and sought to schedule a meeting with him in relation to the case of Mr. Laporte. Mr. Bonte informed the investigator that everything was clear on the verdict and there was not enough evidence provided for the case and that the Commission should request the relevant documents from the court record. When Mr. Bonte was advised that the Commission had done so and it was seeking to ascertain from him whether there had been political pressure in the case, Mr. Bonte queried how there could be political pressure when there was a jury. When it was explained to Mr. Bonte that the matter had not gone to the jury, he stated that "[t]hen the Judge took a decision and the judgment is clear. You know Mr Laporte's family was not satisfied with the end result but there was not enough evidence for the case and the Judge made his verdict. I have nothing else to tell you. Hope this helps".

1. Wilby Lucas

84. On 9 March 2022, the Commission investigator interviewed the State Counsel who prosecuted the case on behalf of the Republic of Seychelles, Mr. Wilby Lucas. Mr. Lucas advised the investigator that when State Counsel is allocated a case they do not enter in to any political issues. However, as a Seychellois, and lawyer at that time they all knew that France Panagary was a strong supporter of the SPPF. Mr. Lucas stated "And this was not his first case, there were other cases". Mr Lucas advised that they also knew that the victim and his families supported the opposition.

85. Mr. Lucas stated that when cases would come to their office, the Attorney General would assess the seriousness of the case and decide to whom to allocate the case. This case was assigned to Mr. Lucas. Mr. Lucas stated that when he received a case he would read it, and if there were issues to clarify he would call the Police Investigating Officers and meet with them. At a certain stage they would

determine the grounds to justify whether it would be a murder or manslaughter case. He stated that this decision was not made by the Case Officer alone, but after interaction with the Attorney General.

86. Mr Lucas stated that the decision to charge manslaughter was not his decision, it was a collective decision with the Attorney General's participation. The Police would also be informed that in order to charge someone with murder, under the law there were certain elements and criteria that had to be met. You would need to show that there was an intention to cause grievous harm. You would need to show "other ingredients in your report". Mr. Lucas stated that he would read the law to find out the ingredients for a murder charge.

87. Mr. Lucas stated that according to Mr. Laporte and his children, it appeared that the car of Mr. Panagary was following them. Mr. Panagary's car was coming from Victoria to South and according to the Laporte's it was following them. When they parked at Katiolo, the car also parked. They got out and went up to Mr. Panagary and Mr Laporte asked "what is happening, I've seen you following me?" Mr. Lucas stated that there was an exchange of words and there were two or three boys with Mr. Laporte. The eldest one it seemed was away in the disco, but the younger one was present with Mr. Laporte. He was a witness. Mr. Panagary and Mr. Laporte argued and argued and Mr. Laporte felt something stab him. Mr. Panagary left, and Mr. Laporte felt there was blood, and he believed he had been stabbed with an object. Mr. Laporte was later transported to Anse Royale Hospital.

88. Mr. Lucas stated that an incident like this is not a charge for murder. It lacks substance. For murder there must be "planification"—a plan to kill you or do something to you. With respect to the fact that Mr. Panagary followed Mr Laporte, Mr. Lucas noted that he could have been on another mission. He stated that probably if Mr Laporte hadn't gotten out of his car and spoken to him, there would not have been any incident. So, this is why they decided to charge for manslaughter. Mr. Lucas stated that there were issues at court which is why the case collapsed.

89. Mr. Lucas advised that before proceeding with the case they met with the family to establish they had enough evidence to support the case. Mr. Lucas noted that they did not want to go to court with a case if it had only a 50% probability of success.

90. Mr. Lucas stated that the reason they brought the case to court was that the second son, the youngest one, he had given them confirmation that he recognised the man, Mr. Panagary. He may have picked him out of a parade; the Police may have conducted an ID parade. "The youngest son gave us an assurance that he could testify and identify the guy in court". Mr. Lucas recalled that he interviewed him and he gave Mr. Lucas that assurance. Mr. Lucas recalled that he told the youngest son not to be scared, and they would ask him in court if he could see the person. That was the kind of preparation we did.

91. Mr. Lucas recalled that when the case came to court the Chief Justice at the time was Alleear. Everyone was giving evidence and CJ Alleear stepped into the shoes of the prosecutor. He would do some of the Prosecutor's work and that in fact he did both Prosecution and Defence and Mr. Lucas felt he did a lot for Mr. Bonte. CJ Alleear intervened in the cross-examination. Mr. Lucas stated that normally a Judge leads as a referee. If you go over the line he says no, or if there is an objection he decides whether to overrule or whatever. But when it comes to cross-examination, usually it's when the Prosecutor has finished and said "That's all My Lord" then if he has questions to clarify he asks questions from the court but he shouldn't intervene until cross-examination is completed. The judge should also wait until

the Defence Counsel has completed his cross-examination if he has questions from the court. At that point he should seek clarification. But the Judge should not build up anybody's case. Mr. Lucas stated that they felt disappointed in this case because Judge Alleear interfered a lot.

92. Mr. Lucas stated that even though Judge Alleear improperly intervened in the case what really affected the Prosecution case was when the boy gave evidence. The youngest son gave evidence that it was a black man that had had an argument with his Dad, and then the Judge asked if he had identified the person in the ID parade and he confirmed that he had. Then the Judge told him "Take a look around, do you see that man in court today"? Mr. Lucas stated that it appeared to him that Panagary put a certain expression on his face which demoralised that boy. It broke him. He then said "No, I can't see him, I don't remember". Mr. Lucas recalled that this was the end of the case, he was the only witness and the best witness the prosecution had.

93. Mr. Lucas recalled that Mr. Panagary had even made a confession. But in his defence, he raised something, which they felt might cause the Judge to call him to make his defence. Mr. Lucas stated that the judge could say "On the basis of what we have before us, I think the Prosecutor has made a prima facie case, and I will call the Accused to make his defence". But he acquitted Mr. Panagary with no case to answer. Mr. Lucas stated that the Judge more or less ignored whatever Mr. Panagary had said to the Police. Mr. Lucas noted that this was the way the system worked. Their case had some weaknesses. The identification was one, the time the incident took place as it was dark, visibility – was there light or not – to be able to properly identify the person. All these are precedents in identification cases which we have to use – was the area properly lit to be able to properly see the person.

94. Mr. Lucas stated that these issues would have been raised in the cross-examination if the youngest son had said, "Yes he is the one". The Defence could have said - and we, could also have asked given you have identified him, was there enough light for you to see him? But the fact that he had said "no it wasn't him", they couldn't go further. The Defence Counsel could not ask him about this, because there was now no need. We were blocked then. So this was when the case collapsed.

95. Mr. Lucas noted that the Prosecution cannot appeal to the Court of Appeal. Prosecutors have something called 'Revise' and they have always felt that this should be done away with. If the prosecutor feels that the Judge has made an error in the case of the Prosecutor, on the case of the Republic, the Republic should be able to appeal to the Court of Appeal. But the revision applies only to appeal the sentence. If the person has received a sentence which is too lenient, then that is for the Court of Appeal to revise. Or you can bring the case to the Court of Appeal for guidance on a point of law for future cases. But in criminal cases only the Defence has the right to appeal, whereas in civil cases both sides have a right of appeal. Mr. Lucas stated that these are the deficiencies in the law, and that the Republic must have a right to appeal.

96. Mr. Lucas recalled that when the case collapsed, the family was disappointed and Mr. Lucas was wrongly accused of allowing those proceedings to fail. Ms Laporte has never been friends with him since.

97. Mr. Lucas advised that lawyers generally did not stay long in the Attorney General's Office, it's a training ground. All the lawyers whom you see practising privately today, have all passed through the Attorney General's office. Mr. Lucas recalled that as soon as he got his two years' experience he intended to move into private practice. He noted that normally when you come from the Attorney

General's office you join a practice which is properly settled until you are able to go out on your own. Mr. Lucas stated that he had agreed to join Mr. Bonte - they were friends. They had agreed that Mr. Bonte would work in the office and Mr. Lucas would go to court. They had already started working on an agreement. But when this case collapsed, Mr. Lucas told him sorry but they needed to stay apart. Mr. Lucas stated that he didn't want to create more animosity, because people around would say well the case against Mr. Panagary was lost on purpose because of this or that. Mr. Lucas stated that he then joined the office of Mr. McGregor. Mr. Lucas stated that he did not think Ms. Laporte was ever able to forgive him because probably she thought they could have done better, or things did not happen as they should have.

98. Mr. Lucas recalled that Ms. Laporte went to see Bernard Georges who wrote to the Attorney General, and asked him to do something. Mr. Lucas recalled that he may have advised them that they could take a civil case. But they did not.

99. Mr. Lucas noted that they had the very worst Chief Justice, but that was how it was back then. This was not the first case where CJ Alleear didn't follow the protocol of a judge. He did not obey procedures, he interfered in the case and did not allow it to play fairly. He interrupted and did not allow the procedure to run smoothly as it should have.

J. Police File and Officers

100. On 22 January 2020 the Commission sought access to the police investigative file in the killing of Phillip Laporte. The Commission received no response to that request. On 25 February 2021, the Commission reiterated that request. The Commission received no response from the police. On 4 November 2021, the Commission reiterated that request to the police authorities. The Commission received no response. On 15 December 2021, the Commission again reiterated that request but received no response.

101. Failing access to the police file, the Commission investigator sought to interview the police officers that had been called to give evidence at the trial and had been involved in the investigation. Of those that had been involved in the case, the Commission learnt that Michel Barbe, Thomas Banane, Andy Kilindo, were deceased.

1. Yves Leon

102. On 28 January 2022, the Commission investigator took a statement from Yves Leon, Police Detective/Scientific Support & Crime Records Bureau. Mr. Leon stated that he remembered the case very well. It happened in 2000 and he was in the Scientific and CRB Unit, at the time of the incident. Mr. Leon recalled that the incident happened near the Katiolo area. He was called to the scene for photographic support, and when he arrived, Mr. Laporte had already been transported to Anse Royale Hospital. Mr. Leon recalled that the evidence was that there were three other male individuals with Mr. Laporte at the time of the incident. Mr. Leon stated that Mr. France Panagary had stabbed Mr. Laporte who had two wounds on his chest area. Mr. Leon was present when the autopsy was conducted and he took photos of the victim. Mr. Leon recalled that Mr. Laporte had been transported to Victoria Hospital for further treatment. Mr. Leon recalled Dr. Thani was the doctor in charge and stated that if

Mr. Laporte had received urgent medical treatment, he would have survived. It was internal bleeding that caused his death.

103. Mr. Leon recalled that Mr. Panagary lived at Pointe Larue and remembered that he and other officers went to Mr. Panagary's house to search for any weapon. None was found. When asked, Mr. Leon stated that he did not know if political pressure had been brought to bear on this case to ensure that Mr. Panagary was not punished.

2. Benjamin Zab

104. On 4 February 2022, the Commission investigator interviewed Mr. Benjamin Zab, who held the rank of Inspector at the time of the incident and had been summoned to appear as a witness during the court proceedings. Mr. Zab informed the Commission investigator that he had little recollection of the case because he had handled so many cases. When he was asked whether he was aware of any political interference in the case, he responded that when he was a police officer he did not get involved in politics or show his political affiliations so he could not answer the question.

3. Marianno Orphee

105. On 8 February 2022, the Commission investigator also interviewed Ms. Marianno Orphee. Ms. Orphee advised that as an investigator, she recalled that she had been sent to the hospital (D'Offay Ward) to pick up the clothes that had been on the deceased, Mr. Phillip Laporte. She saw a nurse but she could not remember her name. The nurse handed over a plastic bag with the deceased's clothes in it and she passed this to the police scientific unit. Ms. Orphee recalled that when she was summoned to court, she gave evidence that she had seen blood on the deceased person's shirt but she was told "do not say blood as you are not a doctor and that what she should say was that she saw red stains which she suspected to be blood". Ms. Orphee stated that she recalled that the deceased's shirt had a slit in it, it was a stab wound of roughly 2 or 3cm, but she could not remember whether it was on the right or left side or in the middle of his chest. Ms. Orphee recalled that they never found the weapon and she recalled that when the case was being heard in court she never knew what exactly was used to stab Mr. Laporte.

106. When asked whether she was aware of any political interference in the case, Ms. Orphee stated that she did not know but she thought the case may have had something to do with traffic congestion but she could not confirm. She was not aware whether Mr. Panagary was friendly with or frequented state security personnel. Ms. Orphee stated that she never knew Mr. Panagary before this incident. After the incident, she heard others saying that Mr. Panagary attacked tourists and robbed them and that he also robbed the Petrol Station at Pointe Larue.

4. Ernest Quatre

107. On 21 February 2022, Mr. Ernest Quatre provided a statement to the Commission concerning his recollection of this case. Mr. Quatre stated that he recalled this case was reported to the police but he did not recall the exact date. He stated that the case must have been reported at Anse Aux Pins Police Station as Anse Faure is in the District of Anse Aux Pins.

108. Mr. Quatre stated that in 2000, he was attached with the CID Police Headquarters, Victoria, and at that time, serious crimes—such as murder, manslaughter, rape, and robbery—were investigated by the CID even in police districts as there were no CID personnel attached to the police districts. Mr. Quatre advised that, after being contacted by the Commission about this case, he made some research and found out the following: It was Thomas Banane, a CID officer in the rank of Assistant Superintendent who investigated the case. Normally, other officers joined the main investigation to a certain stage of the case. Mr. Quatre stated that he may have been in the group in the initial stage of the investigation but Mr. Banane was in charge of the case until it was completed and sent to the Attorney General's Office for prosecution.

109. Mr. Quatre stated that he came to know that on that day, both Mr. Laporte and France Panagary were at Katiolo Discotheque when they were involved in a quarrel, but he did not know the cause of the quarrel or if the quarrel started inside, or in the car park. Mr. Quatre stated that at the time of the incident both were on the main public road, they were each in their vehicles but it happened that Mr. Laporte had come to Mr. Panagary's car and at the time Mr. Panagary was sitting in the driver's seat and Mr. Laporte was leaning against Mr. Panagary's car. Both were exchanging words with one another, Mr. Quatre recalled, when Mr. Panagary wounded Mr. Laporte with a screwdriver in his chest, causing a "punitive" wound.

110. Mr. Quatre said that he also learnt that after Mr. Laporte was wounded Mr. Laporte went to Anse Royale Hospital and was seen by a doctor.

111. Mr. Quatre stated that he did not know and it was not clear whether the doctor sent him to Victoria Hospital or if he went by himself, but he died at Victoria Hospital due to internal bleeding, as his lungs were punctured on account of the wound.

112. Mr. Quatre recalled that Mr. Panagary was charged in the ensuing case, but he did not recall if it was for murder or manslaughter. He recalled the case was before the Supreme Court, but at the end of the trial he was not convicted but he did not know on what ground the judge based his judgement as Mr. Quatre was not in court.

K. Franky Laporte

113. On 10 February 2022, a Commission investigator interviewed Franky Laporte, the brother of Phillip Laporte. Franky Laporte informed the Commission investigator that his brother was older than him, drank a bit, and was a non-smoker. Philip Laporte was not a supporter of the SPPF – which he described as "Albert René's Regime"—and he stated that out loud. He was a democratic supporter. Franky Laporte stated that all of his family were opposition supporters.

114. Franky Laporte claimed that he had been with his older brother Phillip on that Friday evening. They were having a few Seybrews at Anse Royale. Franky Laporte stated that there was a lady with whom his brother was having an affair and her name was Monica. He could not recall her surname. He stated that he thought she resided at Cascade. Franky Laporte recalled that Phillip told him that night he was taking his boys out for a good evening.

115. Franky Laporte stated that he did not know what happened that Friday night. It was only the next morning at around 6 A.M., he received a call from Philip Laporte's wife (Wilna Laporte) that Phillip had been involved in an accident and was at the Victoria Hospital. Franky Laporte rushed to the hospital on his way to work and upon arrival he saw his brother laying on a bed and he started talking to him, but, he said, "unfortunately he was dead". Franky Laporte asked for information as to what happened to his brother and he was told it was France Panagary.

116. Mr. Laporte stated that he then went to the airport as he ran a car hire and he saw Mr. Panagary in a white Toyota car S110 and the seat was pushed back and he was resting. His car was first in the row. Mr. Panagary was a taxi driver. Mr. Laporte stated that what he understood was that Mr. Panagary was SPPF and the lady that his brother was having an affair with, Monica, was also with Michael Uranie. Mr. Uranie was also a taxi driver, and used to spy for Albert René.

117. Franky Laporte recalled that on the Sunday morning at around 11.00 A.M. or 12 P.M., the taxi driver, Mr. Uranie, and the lady Monica came to his brother's house to bring a large fish (Karang). They said to the family that if they needed anything to please tell them and they would be happy to help. Franky Laporte claimed that Mr. Panagary and Mr. Uranie were very close friends. They were both taxi drivers and they worked undercover for SPPF.

118. Franky Laporte stated that he heard on TV during the 8 P.M. local news that someone mentioned that Mr. Panagary was following Phillip's car but he did not want to talk about the incident again.

119. Franky Laporte stated that one day, during the curfew period, he was going down town at around 6.30 P.M., near Independence House, where the Bodco shop was and he saw former Minister Sylvette Frichot, Mr. Panagary, and Antoine Ragain. He noticed an envelope with the name Sylvette Frichot and he looked at them, and Mr. Panagary laughed. Franky Laporte claimed that every time after that when they came into contact, Mr. Panagary would threaten him, saying "be careful, you will end up like your brother". Franky Laporte claimed that many times Mr. Panagary threatened him by showing him the "slit throat sign".

120. Franky Laporte stated that he heard that the case against Mr. Panagary was dismissed due to lack of evidence from Philip's sons. France Bonte was the lawyer for Mr. Panagary. Franky Laporte stated that Mr. Panagary was an SPPF supporter and he was very close with Robert Ernesta in the army. They used to attack and rob forex from Chinese businessmen. He claimed that Mr. Panagary used to walk around with a gun, and he frequented Robert Ernesta and Mr. Uranie. Mr. Uranie was the driver of former President James Michel.

121. Franky Laporte recalled that he and his brother used to swap cars and that he mainly used car hire. Franky Laporte stated that he was sure the target was his brother. He stated that Philip had no issues with anyone at the time. Franky did not drive Phillip's family car, and it was only when Phillip picked him up for a drink that they would go together. Franky Laporte stated that Phillip did not own a car and he mainly used his wife's company car. When the incident happened, Phillip was in the company car, a lancer. Franky Laporte claimed that Mr. Panagary knew that his brother drove the lancer.

122. Franky Laporte recalled that one day, Mr. Panagary conducted a robbery at Robert Marie's property. Franky Laporte worked for Mr. Marie and that is why people associated him as the target. Franky Laporte stated that Mr. Panagary knew him well, and he did not believe he was the target. Franky

Laporte stated that Mr. Panagary is a thief and he even robbed the airport petrol station, and many other places. Mr. Panagary did his time for robbery and drugs but for murdering his brother he was set free. Franky Laporte did not want to see his face ever again and until this day he avoided him.

123. Franky Laporte stated that when the case was dismissed in court, he went to talk to Mr. Ernest Quatre who was in the CID unit in the police force back then. He asked him why the case was dismissed when they all knew it was Mr. Panagary that murdered his brother. He recalled that Mr. Quatre looked at him, shook his head, and replied "I cannot tell you anything about this and I don't know anything, but Laporte, I also find this whole situation wrong". Franky Laporte claimed that his brother's murder was politically motivated and they knew at the highest level that his brother was not an SPPF supporter.

L. Michael Uranie

124. On 15 February 2022, the Commission investigator interviewed Michael Uranie, following the interview of Franky Laporte. Mr. Uranie stated that he knew Mr. Panagary as a taxi driver who was based mostly at the airport, but he did not know anything about the incident with Phillip Laporte. Mr. Uranie stated that he only came to know about it through his girlfriend, as she was very close with the sons of Phillip Laporte. The girlfriend he was living with today was his girlfriend then, but at that time she stayed with her family whilst he was still living with his legal wife. Mr. Uranie recalled that she called him to say that Richie's father got stabbed near Katiolo. Then he also heard the news at the airport from the other taxi drivers.

125. Mr. Uranie stated that he was not friends with Mr. Panagary but he was friendly with the sons of Phillip Laporte, through his girlfriend. They often went out for a drink, but he did not frequent Phillip Laporte. Mr. Uranie denied that the day following the death of Phillip Laporte, he and his girlfriend visited the Laporte family.

126. Mr. Uranie confirmed that he worked with James Michel and stated that he was his driver. He stated that Mr. Michel met him on Praslin, and had asked him whether he would like to be his driver and he accepted. Mr. Uranie stated that he was his driver and his security and then they had a few issues and he fell out with Mr. Michel. He only worked with Mr. Michel for two years, starting in 2000.

127. When asked whether he ever saw Mr. Panagary at State House, or heard Mr. Panagary was frequenting with the State Security officers when he was the driver for Mr. Michel, Mr. Uranie stated that he was not working much at State House. Mr. Uranie was mainly based at Central Bank because Mr. Michel was at Central Bank at that time.

128. Mr. Uranie claimed that he was unaware of Mr. Panagary frequenting former Minister Sylvette Frichot. He further claimed that he never frequented Robert Ernesta and was only close to Phillip Labonte as they had worked together.

129. Mr Uranie stated that he did not know anything about Mr. Panagary acting as a spy for State House. All he knew is that Mr. Panagary had an attitude, especially working as a taxi driver at the airport.

M. Veronica Moustache

130. **On** 17 February 2022, the Commission investigator interviewed Veronica Moustache, following the interview of Mr. Uranie, who had identified her as close to the Laporte family. Ms. Moustache informed the investigator that she was a very close friend of Mr. Laporte and his two sons, Richard and Richie and their two sisters, who were still very young. Every now and then, they would meet socially and have a drink. On the day that Mr. Laporte was killed, they had planned to go out to dinner. They had decided to go to the Reef Hotel, which was still open then. They ordered pizza that day; there was Ms. Moustache, Richard, Richie, and Mr. Philip Laporte. They ate their pizza and they had a good time. The Laportes then left to spend some time by the sea at Au Cap, opposite the Creole Institute near the boat shed. They had drinks, put on some music, and spent some time there while waiting to go to the Katiolo Discotheque. Ms. Moustache stated that she then told them that she did not want to go to Katiolo as she was feeling a bit tired and wanted to go home to sleep.

131. Ms. Moustache recalled that they we went down and dropped Richard and Richie, if she was not mistaken, at the Katiolo. Mr. Laporte then dropped her home, then went back to fetch his sons. Ms. Moustache recalled that on the way down one of the children called him to tell him to buy some drinks. He dropped her home, where she went to sleep.

132. Ms. Moustache recalled that the next day at around 6.30 A.M. Richard or Richie called her and said, 'Daddy is dead'. Ms Moustache stated that she didn't believe it but he confirmed it and she started crying. Ms. Moustache stated that "having been together and having a good time, and then in the morning someone tells you that person is dead, gave her goose pimples". She stated that this has stuck in her mind and she could not forget it. Ms. Moustache stated that she kept saying "no, no, no" to his son, but he told her it was true. Ms. Moustache recalled that when he insisted it was true, she started crying again and told him she would see him later.

133. Ms Moustache recalled that it was the same day that she went to see them, Mr. Laporte's wife, and other relatives. She stated that "when something like this happens we try to console each other, we cry together". Ms. Moustache stated that later they told her what had happened, that France Panagary had killed their father. They told her that when they were going up. She said she did not know if there was a parking problem, but she had been told they argued about it and then Mr. Panagary just came and stabbed Mr. Laporte with a pointed object. She recalled it was just one time, not two or three. Just stabbed once in his chest, and he was dead.

134. Ms Moustache recalled that she stayed close with the family, and they held the funeral and that she was still friends with them today. She stayed friends with them until they left for America. She recalled that Mr. Laporte's wife decided to go to America to start a new life. Ms. Moustache said, "You know when you are here the way things are".

135. Ms. Moustache recalled that when they went to court Mr. Panagary was not punished but after sometime he was involved in a theft incident at the Shell Station at Pointe Larue. Ms. Moustache stated that that was when he was arrested and was sentenced to prison. She stated that this was not enough. The judgement was not fair.

136. Ms. Moustache claimed that at the time she was friends with Mr. Laporte, it was not a political time, it was during 'normal times'. She said the Laportes were friendly and caring people. She said, "for me to describe them - they were friendly, they were caring people". Ms. Moustache did not recall Mr. Laporte showing his political views publicly. Ms. Moustache confirmed that her boyfriend Michael

Uranie was working as the driver to James Michel at the time, and that he was still her boyfriend to date. She claimed that Mr. Uranie came to know Mr. Panagary when Mr. Panagary went to steal from the Chinese tourists. That was when his name came up and he became popular, so then they knew about Mr. Panagary. However, she claimed Mr. Uranie had never been that close with Mr. Panagary to be socially friendly. She noted that maybe if they met they would say hello like anybody else. Ms. Moustache claimed that Mr. Uranie did his job and the only person that he was friendly with was the bodyguard of Mr. Michel, Mr. Labonte as they worked together and they would sometimes have a drink when they met. Ms. Moustache stated that Mr. Uranie was not the sort of person to be friends with just anybody, he would never bring just anybody home, and he was not this sort of person. Ms. Moustache denied that Mr. Uranie was ever friendly with Robert Ernesta. She claimed that he knew Mr. Ernesta only through work at State House but otherwise Mr. Uranie had never gone around with him.

N. Robert Ernesta

137. On 17 February 2022, the Commission investigator sought to arrange an interview with Robert Ernesta. Mr. Ernesta was informed that the Commission had received information that Mr. France Panagary was a strong SPPF supporter and that he was associated with State Security officers. He was further informed that the Commission had received information that Mr. Panagary was a close friend of Mr. Ernesta and that Mr. Panagary was used by Mr. Ernesta to conduct "dirty missions".

138. Mr. Ernesta responded to that request for an interview advising that the case had nothing to do with him though he knew Mr. Panagary well. Mr. Ernesta stated that Mr. Panagary was a lawbreaker and that he may have used State Security officers to shelter himself from consequences of his robberies. He further stated that Mr. Panagary was not a spy for State House as far as he knew.

O. Medical Records

139. On 22 January 2020, the family of Mr. Laporte signed a confidentiality release form for access by the Commission of the medical records of Mr. Laporte. On 11 March 2020, the Commission was informed that the records could not be found and further details were requested from the Commission. On 2 July 2020, the Commission reiterated its request and provided additional details to assist in the identification of Mr. Laporte's records. Receiving no response, on 30 September 2020, the Commission again sought access to the medical records of Mr. Laporte through the Health Care Agency. On 11 February 2021, the Commission reiterated its request specifying that it sought access to the post mortem records. On 16 February 2021, the Commission was requested to provide further identifying information, which it did on 17 February 2021. On 5 March 2021, the Commission was informed by the Health Care Agency that it could not locate any records for Mr. Laporte. The Commission was informed that all non-active medical files and post-mortem records beyond 10 years are stored at the medical file library. Most of these records have been destroyed by flood and/ or infested with fungus. The Health Care Agency found no record of registration for Mr. Laporte during the last ten years and his file was not available at the medical library.

140. Failing to receive access to the file, the Commission sent the medical evidence obtained from the trial record to a medical expert for evaluation. It was noted by that expert that Dr. Moataz received a call at 4.30 A.M. and that he was called again by the casualty staff at 5.30A.M. regarding the same patient

who was already dying. The medical expert noted the first hour in emergency is called the "golden hour" period, whereby a patient who is seriously injured or seriously ill has the best chance of survival if medical help is delivered within this golden hour. The medical expert noted that it appeared that this did not happen in this case. The call was placed from Anse Royale hospital at 4.30 A.M. At most it would take 30 minutes to travel from there to Victoria Hospital given the absence of road traffic at that time. The medical expert noted that Dr. Moataz stated in his evidence that he was called by the nurses in casualty to say that the patient was not well, but it is not clear whether he was in fact being treated by a casualty doctor at the time that Dr. Moataz was called. In this respect, it appeared to the medical expert that Mr. Laporte was not attended to as expeditiously as he should have been and that his first treatment by a doctor at Victoria Hospital was at 5.25 A.M when he was seen by Dr. Moataz.

P. State Security

141. The Commission sought to verify the claims of Ms. Laporte that Mr. Panagary was also a spy for the Government while he was a taxi driver. The Commission investigator interviewed Mr. Jemmy Marengo on 27 August 2020. At the time of the incident, Mr. Marengo worked for State Security from State House. Mr. Marengo advised the investigator that he knew Mr. Panagary and that he had robbed the Shell petrol station at Pointe Larue. Mr. Marengo stated that he did not think Mr. Panagary worked with the State. Mr. Marengo claimed that he believed Mr. Panagary would pretend to people that he would work with the State, like Timothe the spy. These people would pretend with people that they were working for the State as spies. Mr. Marengo stated that "now if you called them before the Commission they will say 'no I never worked there'. Whereas before they would have told people they did". Mr. Marengo further advised the investigator that he did not know Mr. Phillip Laporte or what had happened to him or the allegations against Mr. Panagary in that regard.

142. The Commission investigator interviewed Marc Pool, who had been assigned to State Security at the time of these events, on 28 January 2022. Mr. Pool stated that he had never seen Mr. Panagary but he had heard from his colleagues that Mr. Panagary was a taxi driver. Mr. Pool had never seen Mr. Panagary at State House and did not believe he worked as a spy for State House.

143. The Commission investigator also interviewed Mr. Francis Lesperance, who at the time of the events worked for State Security out of State House. Mr. Lesperance informed the investigator that he knew Mr. Panagary as a taxi driver. He did not recall whether he drank with him as a friend, but he was not best friends with him. Mr. Lesperance stated that he did not remember the incident near Katiolo. Mr. Lesperance stated that he did not recall the incident of the stabbing. Mr. Lesperance stated that he did not remember when he was in State Security whether he used Mr. Panagary as one of his contacts. Mr. Lesperance claimed that the information that he did so is false. Mr. Lesperance stated that he was in the group with Jemmy Marengo and Marc Pool but he did not recall whether Mr. Panagary ever provided any information to the State Security or whether he was friendly with State Security. Mr. Lesprance claimed that when he worked in State Security, he worked differently; he used to look for his own information and report to his boss, Rolly Marie, Frank Marie, and Dobin Samson.

144. On 8 February 2022, the Commission investigator interviewed State Security operative Charles Mellie. Mr. Mellie stated that he did not know whether Mr. Panagary was a spy for State House. He stated that he was not a collaborator that worked with Mr. Mellie or his group during that time. Mr. Mellie stated that he did not even know who handled him or even know if he ever visited the President. Mr. Mellie

stated that as a State Security officer they only handled their own agents and did not interfere in the work of other colleagues. When asked about whether Judge Alleear and the President communicated often and whether Judge Alleear frequented State House, Mr. Mellie stated that he often saw Judge Alleear at State House visiting the President. Mr. Mellie stated that he saw his car many times and saw him going to the President's office. However, Mr. Mellie advised that he would not know what they talked about as their meetings were very private.

Q. Suspect Notification – France Panagary

145. On 28 October 2019, the Commission served a suspect notification on Mr. France Panagary. In that notification, the Commission advised Mr. Panagary that he had been identified by Ms. Wilna Laporte as responsible for the unlawful killing of her husband, Mr. Phillip Laporte, in December 2000 at the Katiolo night club at Anse Faure. It was further alleged that as a taxi driver, Mr. Panagary was working undercover for the Government and that the attack on Phillip Laporte was a case of mistaken identity. Mr. Panagary was informed that the attack was witnessed by the sons of Ms. Laporte and that it was further alleged that following this incident Mr. Panagary would harass the family of Ms. Laporte leading to their decision to emigrate to the United States as they feared Mr. Panagary. The Commission requested a response from Mr. Panagary no later than 13 November 2019.

146. On 6 November 2019, Mr. Panagary visited the premises of the Commission and provided a statement to an investigator. Mr. Panagary stated that he had nothing to do with the alleged murder of Mr. Laporte. He further stated that he never worked for the Government in power in the year 2000. However, he stated that he was still friends with State Security because he went to school with one of them. As a taxi driver, he was trusted and he would have trusted some of them. Mr. Panagary stated that concerning the allegation that the attack on Mr. Laporte was a case of mistaken identity, he did not know and never knew Mr. Laporte so it was impossible for him to be involved in such alleged action. Further, he never met and never knew the son of Mr. Laporte, Richard Laporte. However, Mr. Panagary stated that his wife may have known him because there was an incident that took place between his neighbor and his son. Mr. Panagary stated that his son was hit by a rock and his wife intervened. Mr. Panagary claimed that Richard Laporte then said "blood will spill just like the way your father did to my father". Mr. Panagary stated that this was a separate issue and that he should be the one filing the case. Mr. Panagary stated that he never harassed Richard Laporte or his family. He alleged that instead he had proof that they were the ones who harassed him. Mr. Laporte stated that he did not know them and he would meet them and talk to them because he had nothing to do with the death of Mr. Laporte. Mr. Panagary advised the Commission to get a copy of the court proceedings in relation to the death of Mr. Laporte.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

147. 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".[18]

[18] TRNUC Act, secs. 3(9), 6(8)(a).

These principles must guide the Commission's determination of whether the conduct alleged constitutes human rights abuse pursuant to its Act.[19]

148. 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.[20]

149. 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".[21] Any finding of individual responsibility is to a balance of probabilities standard.[22] 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.

150. The Commission further notes that a persons who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any violation and [offering] sincere apologies to the victim or victims".[23] 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.

151. 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

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[19] *Id.*, section 2(8).

[20] 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".).

[21] TRNUC Act, sec. 7(b).

[22] *Id.*, sec. 6(8)(c).

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

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.

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

153. 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.

154. 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

155. 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.

156. 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.

157. 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.

158. 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 Killing

159. On the claim of the violation of unlawful killing, the Commission finds that Phillip Laporte suffered this violation under Section 2(8)(a) of the TRNUC Act,[24] in severe violation of his right to life.[25] The Commission finds that his surviving wife Wilna Laporte, his sons Richard and Richie, and any other immediate family members are also victims of this violation, to whom reparations are owed.

160. Regarding the required admissibility nexus to the Coup d'état of 1977, the Commission first recognises that this violation clearly falls outside of its primary temporal mandate of the period of the one-party State, roughly from 1977 to 1993. However, considering the Commission's thematic mandate, the Commission recalls that at the time of the events in question, presidential power remained with Albert René, who had taken that power with the Coup d'état of 1977. In that respect, the Commission recalls its finding that the party that took power with the Coup maintained power and perpetuated an unjust system of patronage that provided benefits to supporters and discriminated against those perceived to be against the party, even after the introduction of the multiparty system effectuated through the 1993 Constitution. The Commission further notes the evidence it has received of the complete erosion of the rule of law in Seychelles following the Coup d'état of 1977 and the considerable evidence it has received of impunity for criminal acts for those who were loyal to the party.[26] The Commission further recalls that the climate at the time continued to be one of fear and in which spying and collecting information on perceived party opponents was encouraged and rewarded and in which taxi drivers in particular had long been recruited as spies by state security operatives. It also recalls that the time of these events was also a period where the judiciary still remained beholden to the executive, were predominately aligned with the party in power, and understood what rulings the executive expected them to make.[27] In this respect, while the Commission notes that in the present case, there was a prosecution and the case went to court, that proceeding resulted in an acquittal against the backdrop of allegations and substantial evidence that the acquitted had in fact committed the act. Further, the

[24] TRNUC Act, sec. 2(8)(a).

[25] *See* International Covenant on Civil and Political Rights [ICCPR], 16 December 1966, 999 U.N.T.S. 171 (ratified 5 May 1992), art. 6(1); *see also* Universal Declaration of Human Rights [UDHR], G.A. Res. 217 (III), 10 December 1948, art. 3.

[26] While ample evidence of this abounds throughout the cases before the Commission, see for example Determination Nos. 205 & 207: Sidna Umbricht and Aruna Couchène, in which the Commission received evidence that suggested fines were only enforced against opposition members. *See also* Case Determination No. 090: Livette Hermitte, *joined with* Case No. 270: Gaetan Didon, para. 170. Notably, the Commission has received evidence in a number of cases of President René directly ordering unlawful actions being taken against persons that were seen not to be with the party in power and allowing impunity for criminal actions of persons associated with the party and in particular State Security. *See id.*; *see also* Case Determination No. 149: Marise Eulentin and Rolderick Larue.

[27] *See* Case Determination No. 122: Roch Jeannie.

Commission notes that in this case the perpetrator was a known supporter of the party, allegedly had relationships with powerful elements of the party, and was tried before a judge that was known to be beholden to the President of the party that had taken power with the Coup d'état of 1977. In light of the seriousness of the violation and the serious miscarriage of justice for the family, the Commission is satisfied that its thematic mandate has been adequately settled, rendering the claim admissible before the Commission.[28]

161. The Commission has considered the violation of unlawful killing under the TRNUC Act to comprise 1) the unlawful deprivation of life of one or more persons, 2) by a perpetrator.

162. Regarding the first element, the Commission has received overwhelming evidence that Phillip Laporte lost his life following an altercation that took place near the Katiolo nightclub on 30 December 2000. The Commission finds that following a traffic incident, in which the taxi car being driven by Mr. Panagary unexpectedly swerved and stopped in front of Mr. Laporte's car causing Mr. Laporte to have to apply his brakes heavily, Mr. Laporte left his vehicle with his two sons to speak with the taxi driver. While standing outside the driver's side of that taxi, Mr. Laporte's younger son Richie observed the taxi driver raise his arm and his father stepping backwards from the taxi vehicle. The taxi vehicle then left the scene and it was ascertained that both Mr. Laporte and his son Richie had received injuries consistent with being stabbed with a small sharp object. The Commission further recalls that Mr. Laporte was taken to the Anse Royale Hospital for treatment where the medical authorities, unable to stem the bleeding, sent Mr. Laporte to Victoria Hospital where he died from his injuries shortly thereafter. The Commission is thus satisfied that Mr. Laporte's death can be characterised as a killing.

163. Regarding the question of whether the killing was arbitrary or unlawful, the Commission finds this element to be satisfied. In this respect, the Commission recalls at the outset that the case was prosecuted for the crime of involuntary manslaughter following an investigation by the police pursuant to the Seychelles Penal Code.[29]

164. With respect to the events that led to the killing of Mr. Laporte, the Commission recalls the evidence of the three occupants in the vehicle with Mr. Laporte, namely Richard Laporte, Richie Laporte, and Daniel Valencia, given before the Commission and previously during the trial proceeding that the attack upon Mr. Laporte was unprovoked. Richard Laporte's evidence was that following the taxi car applying its brakes in front of the vehicle being driven by his father without warning, his father stopped their vehicle and they all approached the driver. According to Richard Laporte, his father was asking the driver why he could not put his indicator light on. Richard Laporte recalled the taxi driver

[28] The Commission notes that its consideration of this case and other cases concerning incidents that occurred past the introduction of the multiparty system in 1993 were subject to a legal challenge by the Attorney-General and the Commissioner Police, which was withdrawn by the Attorney-General prior to any consideration of the merits. The Commission notes that the position of the Attorney-General as reported in the media and in the filings before the Supreme Court was that these matters had already been subject of authoritative findings, and the position of the Attorney-General was that the Commission could not review a judicial decision of the Supreme Court or the Court of Appeal. Moreover, the representative of the Attorney-General's Office stated: "And another thing, I think it is important to point out that the police or the Attorney-General is not trying to prevent the police (sic) from doing their lawful activities or lawful work, what they are trying to do is ensue that government is not accused of any abuse in any process or misuse of powers, or anything of that sort".

[29] The Commission notes that the court dismissed this case, however, on the basis that there was insufficient proof to identify the assailant, not due to the fact that the act that killed Mr. Laporte was a lawful act.

responding "if you want to fight come out and we will fight". Mr. Laporte stated that he and his father responded to the taxi driver and other persons in the vicinity that were calling upon them to "leave the taxi driver alone" that they had not come to fight. Richard Laporte was then attacked and fought with other persons near the Katiolo nightclub some distance from where the taxi and his father and brother were stationed. Richie Laporte's evidence was largely corroborative of Richard's evidence, as was the evidence of Mr. Valencia. The evidence of all three occupants is that at the time Mr. Laporte approached the taxi driver to ask for an explanation, Mr. Laporte intended no physical threat and posed no physical threat to that driver. Their evidence further established that at the time the injuries were inflicted on Mr. Laporte (and Richie Laporte), only Mr. Laporte and Richie Laporte were standing by the driver's side of the taxi in which Mr. Panagary was seated and talking to Mr. Laporte through the open driver's side window. Then, without warning, Mr. Panagary opened his taxi door, raised his arm, and was pushing against Mr. Laporte at the time he received the injuries.

165. In this circumstance, the Commission finds that the stabbing of Mr. Laporte was an unreasonable and disproportionate course of action to be taken by the taxi driver. On all the evidence presented, it was the taxi driver who took the dangerous action with his vehicle causing Mr. Laporte to brake suddenly and the taxi driver who was aggressive upon being called to explain his action by Mr. Laporte. In that respect, the Commission finds on the balance of probabilities that the taxi driver attempted to provoke Mr. Laporte into a physical altercation through multiple taunts, which Mr. Laporte resisted. Mr. Laporte made quite clear to the taxi driver that he had not come to fight: this he had clearly stated in response to the taxi driver's invitation to do so. Nonetheless, it was while Mr. Laporte was attempting to engage in discussion with the driver that Mr. Laporte was stabbed by the taxi driver. In that regard, the Commission accepts that the stabbing (and killing) of Mr. Laporte was more likely than not unprovoked. The Commission has previously found that an unprovoked killing will never meet the principles of legality, necessity, proportionality, and non-discrimination, which are required under international human rights law.[30] Unprovoked killing, particularly under the circumstances of this case in which Mr. Laporte was unarmed and had made clear that he had no intention to fight with the taxi driver, will never be necessary or proportionate to the exigencies of the matter at hand.

166. Therefore, the Commission is satisfied that the killing of Mr. Laporte was unlawful and arbitrary, in satisfaction of the first element of the violation of unlawful killing.

167. Regarding the "perpetrator" element, considering the above findings, the Commission finds that the only reasonable explanation for the injuries suffered by Mr. Laporte is that those injuries were inflicted by Mr. Panagary. The Commission therefore finds on the balance of probabilities that Mr. Panagary was directly responsible for the act that led to Mr. Laporte's death. The Commission also recalls that Mr. Panagary was prosecuted and acquitted of that act in court proceedings on the specific basis that his identity or authorship of the act which resulted in Mr. Laporte's death could not be confirmed on the record of evidence received by the court. Nevertheless, the Commission finds that on the balance

[30] *See* Case Determination No. 001: Dorothy Chang-Him et al., para. 147. *See also* 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 ICCPR. *See* ICPPR, arts. 12, 18-22, 16 December 1966, 999 U.N.T.S. 171.

of probabilities, there has been adequate evidence presented before it to enable the Commission to find that Mr. Panagary was more likely than not the one responsible for the death of Mr. Laporte.[31]

168. Turning to whether the responsibility of Mr. Panagary can be attributed to the State so as to render this a violation of human rights for which the State owes reparations, the Commission considers that the Seychelles does indeed bear responsibility.

169. In this regard, the Commission recalls the evidence of the complainants that they believed Mr. Panagary worked as a spy for State House and that the stabbing of Mr. Laporte was a case of mistaken identity, on Mr. Panagary's part in that he mistook Mr. Laporte for his target. It further recalls the claims of Richard Laporte, Richie Laporte, and Daniel Valencia that prior to the incident, Mr. Panagary had been following their car for quite some distance—as a spy apparently would do. The Commission recalls that none of the witnesses made this allegation during the trial proceeding, which may have been a relevant factor in establishing the intent and motives of Mr. Panagary. The complainants also alleged before the Commission that that acquittal was as a result of Mr. Panagary's connections to State House security operatives who were well known as being beyond the reach of the law and "untouchable".[32]

170. The Commission further recalls the evidence of the Laportes and Mr. Valencia that following the killing of Mr. Laporte, Mr. Panagary followed them and threatened them. According to Mr. Valencia, Mr. Panagary stated to him that as long as the Government was in power, no one would be able to do anything against him, indicating that he was, or believed he was, protected by the Government in power. The Commission also recalls the evidence of Franky Laporte of having seen Mr. Panagary with former Minister Sylvette Frichot and of Mr. Panagary's taunts to Franky Laporte to be careful or he would end up like his brother. It further recalls the evidence of Mr. Panagary's alleged relationship with the driver of former President James Michel, Michael Uranie, and with high-ranking army officer Robert Ernesta. The Commission recalls that both Mr. Uranie and Mr. Ernesta denied that they had any particular affiliation with Mr. Panagary.

171. While the Commission accepts the evidence of the complainants, and finds that they genuinely believed that Mr. Panagary was protected by the party in power and aligned in particular with the sinister elements of that party embedded in State House Security and the army leadership, it has not been able to find any evidence which would support a finding that Mr. Laporte was killed on the orders of the State or that Mr. Panagary was acting for the State and killed Mr. Laporte as a case of mistaken identity. The Commission recalls that none of the State Security operatives it interviewed confirmed that Mr. Panagary was a spy for State House. In that respect, it recalls the evidence of Mr. Marengo and Mr. Ernesta that Mr. Panagary may have used his alleged connection with State Security as a cover for his activities. It further recalls the evidence of witness Rival Andre, who had been identified by Richard Laporte as a witness who could testify that he was told by Mr. Panagary that he had killed Mr.

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[31] In this regard, the Commission highlights that its evidentiary standard—balance of probabilities—is less than that of the court, which in the context of a "no case to answer" proceeding was, taking the evidence adduced by the prosecution at his highest, there is no reasonable basis upon which an accused could be convicted. The Commission also stresses that unlike the court, it is not making a finding of guilt in the criminal legal sense, but rather is naming those who it determines more likely than not to bear responsibility in order to reveal the truth about events that occurred during or in relation to the Coup d'état of 1977. *See supra* para. 149.

[32] *See, e.g.*, Case Determination No. 90: Livette Hermitte; Case Determination No. 149: Marylise Eulentin and Rolderick Larue; Case Determination Nos. 205 & 207: Sidna Umbricht and Aruna Couchene.

Laporte in a case of mistaken identity, that Mr. Panagary had never made this statement to him. In that respect, the Commission finds it more likely than not that the incident between Mr. Panagary and Mr. Laporte was not due to any directive or order of the State but resulted because Mr. Panagary took issue with Mr. Laporte confronting him following the traffic incident.

172. In that regard, the Commission also considers Mr. Panagary's actions after his acquittal in his encounters with members of the family and Mr. Valencia as actions that were carried at by Mr. Panagary in his personal capacity and not as an operative of the State. While the Commission accepts the evidence of the complainants that fear of Mr. Panagary led them to seek refuge in another country, the Commission cannot impute the actions of Mr. Panagary that motivated that decision to the State.

173. However, while the Commission is satisfied that Mr. Panagary acted alone in the decision to stab and ultimately cause the death of Mr. Laporte, the Commission considers that there is evidence suggesting that the State may have thereafter taken actions to ensure that Mr. Panagary, as a party supporter, was not held to account for that action. On that basis, which the Commission has found below to constitute the violation of abuse of office by a Government official, the Commission finds that the State effectively ensured the impunity of Mr. Panagary by failing to fully investigate, failing to ensure the human rights of Mr. Laporte, and failing to provide the Laporte family with justice via an effective remedy, a right at the level of customary international law.[33] Therefore, in failing to provide Mr. Laporte's family with justice, an effective remedy, and the reparations they are owed for the unlawful deprivation of life of their father and husband, the Commission finds that the State bears responsibility for this severe human rights violation.

174. On the foregoing basis, the Commission finds that Mr. Laporte suffered the violation of unlawful killing under the TRNUC Act, in gross violation of his human rights. The Commission further finds that the immediate family members of Mr. Laporte are also victims of this violation to whom the State owes reparations as recommended below.

175. The Commission recalls that Ms. Laporte also alleged that medical negligence on the part of the Government health authorities contributed to the death of Mr. Laporte. On the evidence adduced, the Commission finds it more likely than not that negligence on the part of the medical authorities at Victoria Hospital may have contributed to the death of Mr. Laporte. However, while the Commission finds that this negligence is attributable to the State given that the hospitals were administered by the Ministry of Health, it is not satisfied that the medical negligence in this case is sufficiently related to the Coup d'état of 1977 so as meet the mandate requirements of the Commission, and so the Commission refrains from making detailed findings on these allegations.

2. Abuse of Office by a Government Official

176. Before the Commission, Ms. Laporte alleged abuse of office by a Government official under Section 2(8)(l) of the TRNUC Act in relation to the acquittal of Mr. Panagary for the unlawful killing of her husband. According to Ms. Laporte, Mr. Pangagary's political affiliations with the party that held Government power and his relationship with State Security officials motivated that acquittal.

[33] *See* UDHR, art. 8.

177. With respect to the nexus of this complaint to the Coup d'état of 1977 the Commission considers that as this allegation is closely connected to the allegation of unlawful killing above, the same reasoning applies and that the thematic mandate of the Commission is met.

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

179. Regarding the first element of the violation of abuse of office, the Commission is easily satisfied that there was use of the powers of a public office. In the current claim, the alleged acts were acts of the judiciary in determining the outcome of that prosecution.

180. Secondly, the Commission recalls that the State had an obligation to ensure the human rights of all citizens and to investigate any alleged violations of their rights. In this case, the State was required to investigate the alleged violation of the Laporte family's rights and ensure them an effective remedy, and then to accord the alleged perpetrator, Mr. Panagary, a fair and impartial trial as per his human rights.[34]

181. In this regard, the Commission recalls that during the one-party State and well after the introduction of the multiparty system, the judiciary was not independent from the executive branch. Further, judges, while perhaps not specifically instructed, were often incentivised to make sure that the decisions they rendered were decisions that would please the Executive.[35] In that regard, the pervasive principle of the one-party State of being "with us or against us" equally applied to the members of the judiciary. Notably, the Executive was not only able to influence the judiciary through the appointment of Seychellois based on their allegiance to the party, but it was also able to unduly influence the judiciary through the appointment of foreign judges on a contractual basis. Judges, so appointed, who issued decisions that displeased the Executive would not have their contracts renewed, whereas judges who pleased the Executive would not only have their contracts renewed but would also be rewarded, including by the provision of Seychellois citizenship for foreign judges. Upon the award of citizenship, judges were thereafter expected to continue to demonstrate their loyalty to the Executive through their decision-making.[36]

182. Further, the Commission recalls that Mr. Panagary was tried in these proceedings before a single judge, Judge Alleear. The Commission recalls that Judge Alleear was renowned for his subordination to the Executive and was a common visitor to the President at State House.[37] Further, the Commission recalls that Judge Alleear would often be allocated cases in which the Executive had a special interest, and was either directly instructed on how to rule, or simply knew to rule in the interest of the SPPF or its members.[38] Further, the Commission recalls the evidence of Police Commissioner Gerard Waye-Hive

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[34] *See id.*, arts. 1, 2, 7, 8.
[35] *See, e.g.*, General Views: Roger Mancienne, 8 November 2020, p. 15.
[36] *See* Phillip Boulle, Hearing No. 193, 7 September 2021; Bernard Georges, Hearing No. 194, 8 September 2021.
[37] The Commission recalls the testimony of Mr. Waye-Hive that Justice Alleear was corrupt, routinely took bribes from drug dealers, and had received a car from members of the Executive in exchange for favourable decisions. *See* Case Determination No. 090: Livette Hermitte, *joined with* Case No. 270: Gaetan Didon.
[38] *See, e.g.*, Case Determination No. 311: Darrell Green; Case Determination No. 122: Roch Jeanny.

that Judge Alleear was corrupt and that Commissioner Waye-Hive had been ready to take action against him before Judge Alleear left Seychelles.[39]

183. In the current case, the Commission also recalls the evidence of State Counsel Mr. Lucas, of undue interference in the case by Judge Alleear and his sense that Judge Alleear helped the defence a lot. In that respect, the Commission notes that Judge Alleear dismissed the charges against Mr. Panagary upon a no case submission made by Mr. Bonte on the close of the prosecution's case despite the significant evidence against Mr. Panagary. While the Commission appreciates that reasonable minds may differ, it nonetheless recalls the principle purportedly applied by Judge Alleear from *R v Stiven* in making his ruling in favour of the no case submission: (a) no evidence to prove an essential element of the offence charged; (b) the evidence of the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it. Applying this test, Judge Alleear concluded that the prosecution had not established that the taxi driver was France Panagary; that the prosecution had not established that the driver inflicted the wounds on Mr. Laporte; and that the identification by Richard Laporte of France Panagary could not be relied upon. The Commission finds, based on its review of the trial record, and applying the standard applicable to no case submission proceedings that should have guided Judge Alleear's consideration of the evidence—that is, taking the evidence adduced by the prosecution at his highest, there is no reasonable basis upon which an accused could be convicted[40]—that Judge Alleear erred in his ruling.

184. In that regard, the Commission considers that the evidence adduced by the prosecution established that Mr. Panagary's taxi, which he admitted he was operating that evening, and that held licence plate number S12279, was the vehicle involved in the incident with Mr. Laporte. It further established that at the time the injuries were inflicted on Mr. Laporte (and Richie Laporte) only Mr. Laporte and Richie Laporte were standing by the driver's side of the taxi in which Mr. Panagary was seated. The Prosecution evidence established that Mr. Panagary opened his taxi door, raised his arm, and was pushing against Mr. Laporte at the time he received the injuries. It also established that the instrument used to inflict those injuries could have been akin to the size of a small screw driver or a toothpick, something easily hidden within the hand of a person. The Prosecution evidence also established a positive and confident identification of Mr. Panagary by Richard Laporte during the police line-up three days later, which was consistent with the description that Richard Laporte had given to the police in his statement directly after the event. Taking this evidence adduced by the Prosecution at its highest, the Commission is satisfied that Mr. Panagary did have a case to answer, contrary to the ruling of Judge Alleear. For the reasons set out above, the Commission finds that Judge Alleear erred and was furthermore more likely than not predisposed to ruling in favour of Mr. Panagary because of his loyalty to the party. In this respect, the Commission underscores that Mr. Laporte and his family were not aligned to the party in power.

185. For the above reasons, the Commission is satisfied that the second element is met and that the Laporte family's right to an effective remedy, in the form of a fair and objective judgment by a competent tribunal, was denied.

186. In regards to the third element, that the use of power strayed from the purpose of law or the official's position, the Commission recalls Chapter VIII of the Constitution of the Republic of Seychelles,

[39] *See* Case Determination No. 090: Livette Hermitte.
[40] *R v Galbraith* [1981] 1 WLR 1039, as applied in Seychelles through *Treffle Finesse v R* (19 October 1995).

Judiciary, which states that "the judiciary shall be independent and be subject only to this Contribution (sic) and the other laws of Seychelles".[41] In this regard, the Commission finds that the judiciary's power was not used impartially, as found above, and therefore strayed from the office's purpose as set out by law. On the basis of the foregoing, the Commission is satisfied that the third element has been fulfilled.

187. Finally, regarding the State official or "perpetrator" element, the Commission highlights the role the President had in implementing a system where the judiciary was aligned with the Executive and knew the benefits of ruling favourably for the Executive and essentially the controlling party. In this regard, the Commission considers that in addition to Judge Alleear, the President holds individual responsibility for the abuse of office that denied justice to the family members of Mr. Laporte for his unlawful killing.

188. Further, the Commission finds that individual judges had and have a responsibility to abide fully by the rule of law in the implementation of their decisions, and may incur individual responsibility, in addition to ethics violations, for flagrant abuses of judicial power and corruption of the legal process. The Commission therefore finds on a balance of probabilities Judge Alleear more likely than not bore individual responsibility for the alleged abuse of office as per Section 7(b) of the TRNUC Act.[42]

189. As such, the Commission finds that the violations by Judge Alleear and President René in this case can also be characterised as institutional violations and were as a result of the Executive branch, especially the President, weakening the separation of powers by ensuring there was a compliant judiciary. As the Commission finds that the President and Judge Alleear were acting in their roles as representatives of two branches of Government, and thus primary organs of the State, their acts can be imputed to the State.

190. On the above, the Commission is satisfied on the balance of probabilities that Ms. Laporte and her family suffered the violation of abuse of office by a Government official under the TRNUC Act, in contravention of their right to an effective remedy by a competent tribunal under international law.[43]

V. RECOMMENDATIONS ON REPARATIONS

191. The Commission recommends that Ms. Laporte and the children of Mr. Laporte be awarded reparations for the violations found above in accordance with the Commission's Reparations Policy.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

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[41] Constitution of the Republic of Seychelles, Constitution of the Republic of Seychelles (Preparation and Promulgation) Act, 1992, Act 2 of 1992 (21 June 1993), art. 119(2) [hereinafter "Constitution of 1993"].

[42] While the Commission makes this finding, it has not been able to serve a suspect notification on Judge Alleear to allow him the right to respond due to the fact that he is out of the jurisdiction and efforts to serve him have proven unsuccessful.

[43] *See* UDHR, art. 8.

192. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 091.

193. 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