

VOLUME V

REPARATIONS

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1. Introduction

Pursuant to Section 3(7)(e)(i) of the TRNUC Act, one of the objectives of the Commission is to determine the appropriate reparations for victims, and pursuant to Section 11(3), the Commission's Final Report "shall include its findings, decisions and recommendations with a view to achieving justice and national unity".[1]

A "victim" is defined in Section 1(2)(7) of the TRNUC Act to be "a person who has suffered any harm or detriment as a result of any violation".[2] Pursuant to Section 3(6), a complaint before the Commission may be filed by a victim, representative of the victim,[3] or a close surviving relative of a deceased victim,[4] within six months of the Commission's commencement of mandate.[5]

As the Commission is complaint-driven and it determines the veracity of allegations made by victims, its recommendations on reparations are tied to the complaint that has been made. In that respect, through hearings, investigations, and factual and legal findings, it is the Commission's determination of that human rights violation to a balance of probabilities, attributable to the State, that gives rise to an ensuing right of the victim to a remedy and thus to the Commission's recommendation on reparations for a victim.

As already outlined in Volume I of this report, the Commission was, throughout its mandate, denied certain basic resources to allow it to carry out its functions in an effective and professional manner. Of particular importance to the Commission's recommendations with respect to reparations was funding for outreach and communications, which was consistently denied to the Commission, and dedicated research staff, also consistently denied to the Commission.[6] These denials of basic resources severely hindered the Commission's ability to carry out the foundational work necessary to inform its recommendations on reparations for victims.

In considering the exercise of its power to recommend reparations, the Commission was assisted on a voluntary basis by international experts and practitioners, who carried out extensive research concerning the obligation to grant reparations to victims of human rights violations. In developing its approach to reparations, the Commission was guided by and relied on various principles, standards, and scholarly works. The relevant human rights treaties included the International Covenant on Civil and Political Rights (arts. 2(3), 9(5), 14(6));[7] International Convention on the Elimination of All Forms of

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[1] Truth, Reconciliation and National Unity Commission Act, 2018, Act 9 of 2018 (14 September), sec. 11(3) [hereinafter "TRNUC Act"].

[2] *Id,* sec. 2(7).

[3] The Commission notes that it has conceptualised "representative of a victim" broadly so as to allow the maximum number of complaints before it and thus the greatest prospect for a positive impact on the country's truth and reconciliation process. In that regard, it has accepted complaints filed by, *e.g.*, family members that do not constitute a "close surviving relative" (grandchildren, nieces/nephews, cousins); lawyers or legal advocates; and shareholders of a business whose assets were acquired (and value and/or profitability reduced).

[4] The Commission has considered a "close surviving relative" to include parents, children including step-children or adopted children, siblings, married partners, or concubines of a victim.

[5] TRNUC Act, secs. 3(4)-(5).

[6] In the last five months of operations, the Commission did manage to secure the services of two Seychellois research assistants on service agreements.

[7] International Covenant on Civil and Political Rights [ICCPR], Dec. 16, 1966, 999 U.N.T.S. 171, *ratified* 5 May 1992.

Racial Discrimination (art. 6);[8] International Convention for the Protection of all Persons from Enforced Disappearance (arts. 8(2), 20(2), 24);[9] and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (art. 14).[10] The Commission was also guided by the customary international legal principles enshrined in the Universal Declaration on Human Rights, including Article 8 on the fundamental right to an effective remedy.[11] Other international principles and standards consulted included, *inter alia*, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;[12] Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide;[13] Draft Articles on the Responsibility of States for Internationally Wrongful Acts (arts. 30, 31);[14] Declaration of Basic Principles of Justice for Victims of Crime and Abuse (Principles 4-6);[15] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (art. 9);[16] Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Principles 1 and 2);[17] and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.[18]

With the assistance of international experts, the Commission reviewed the approach of the courts of Seychelles in civil proceedings in which compensation was sought for violations of human rights, and also examined approaches taken in other jurisdictions to the grant of reparations. This research underpinned the Commission's approach to reparations, coupled with the Commission's consultation with complainants through the establishment of a Reparations Focus Group and then the establishment of a sub-committee, the TRNUC Victims Committee, pursuant to Section 8(1)(f) of the TRNUC. All of this culminated in the Commission's Reparations Policy, which is grounded in international principles but also reflective of the realities in Seychelles. The Reparations Policy is to be applied by a successor body to all of the Commission's determinations. Unfortunately, the Commission did not have the capacity to make individual assessments itself with respect to what reparations should be payable to a particular complainant, hence the recommendation of a successor body to ensure full devotion to that important task.

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[8] International Convention on the Elimination of All Forms of Racial Discrimination [ICERD], Dec. 21, 1965, 660 U.N.T.S. 195, *ratified* 7 March 1978.

[9] International Convention for the Protection of All Persons from Enforced Disappearance [ICPPED], Dec. 20, 2006, UN Doc A/61/488 (entered into force 23 December 2010), *ratified* 18 January 2017.

[10] Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment [CAT], Dec. 10, 1984, 1465 U.N.T.S. 113, *ratified* 5 May 1992.

[11] Universal Declaration of Human Rights [UDHR], art. 8, G.A. Res. 217A (III), 10 December 1948.

[12] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 18-23, G.A. Res. 60/147, 21 March 2006, U.N. Doc. A/RES/60/147 [hereinafter "UN Basic Principles"].

[13] INTERNATIONAL COMMISSION OF JURISTS, THE RIGHT TO A REMEDY AND REPARATION FOR GROSS HUMAN RIGHTS VIOLATIONS: A PRACTITIONERS' GUIDE (Revised Ed., 2018) [hereinafter "PRACTITIONERS' GUIDE"].

[14] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. Doc. A/RES/56/83 (Dec. 12, 2001).

[15] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

[16] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).

[17] Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 55/89, U.N. Doc. A/RES/55/89 (Dec. 4, 2000).

[18] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, ECOSOC Res. 1989/65, U.N. Doc. E/RES/1989/65 (May 24, 1989).

2. International Obligation to Provide Reparations

It is well established in international law that reparations are owed by the State for a violation of the human rights of an individual or group: *ubi jus ibi remedium* (where there is a right there is a remedy). This principle has by this point also grown to be a foundational element of any comprehensive transitional justice strategy.[19]

Notably, the foundational layer of the definition of "reparation" is trust in the state to stop, repress, and redress violations, and to take accountability for violations against individuals and collectives.[20] This responsibility is a critical factor in achieving reconciliation within a state.[21]

In tracing the origin of the term "reparation", often invariably referred to as "remedy" or "compensation", in human rights law, the 1948 Universal Declaration of Human Rights (hereinafter "UDHR"), which has widely been accepted as encapsulating the core human rights at the level of *jus cogens* or peremptory norms of international law, provides a starting point. Article 8 of the UDHR states, "[e] everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."[22]

Following this provision, Articles 9(5) and 14(6) of the ICCPR identify the legally binding right of individuals to an effective remedy,[23] as well as parallel rights in other specific contexts, such as the right to compensation for victims of unlawful arrest or detention.[24] The scope of this provision was broadened in 2004 when the U.N. Human Rights Committee adopted General Comment No. 31 [80] to the ICCPR. Paragraph 16 of that General Comment requires that States Parties to the ICCPR must provide reparation to individuals whose rights have been violated under the ICCPR in order for the States Parties to satisfy their obligation to provide an effective remedy.[25]

While the term "reparation" is used in numerous human rights instruments, these instruments contain similar but varied definitions. Today, many legal scholars adhere to the "traditional legal view" of the term "reparation" corresponding to the verb "repair," and accordingly define reparations as "restoring individual victims to their position prior to the harm suffered [...]"[26] or as a measure "to eliminate, as

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[19] "Transitional justice" is defined by the United Nations as "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" .In that respect, the U.N. Office of the High Commissioner for Human Rights (hereinafter "OHCHR"), has identified four tenets of international human rights law, in particular, which have shaped transitional justice and the combat of impunity: the State obligation to investigate and prosecute alleged perpetrators of gross human rights violations and serious violations of human rights law; the right to know about past abuses and the fate of disappeared persons; the right to reparations for victims of serious violations of human rights; and the State obligation to prevent, through different measures, the recurrence of such atrocities in the future. ICTJ, Transitional Justice Issues: Reparations, https://www.ictj.org/our-work/transitional-justice-issues/reparations. GUIDANCE NOTE OF THE SECRETARY-GENERAL, UNITED NATIONS APPROACH TO TRANSITIONAL JUSTICE 2 (United Nations Secretary-General, 2010). Office of the United Nations High Commissioner for Human Rights, Transitional Justice and Economic, Social and Cultural Rights, p. 5, HR/PUB/13/5 (2014).

[20] Int'l Center for Transitional Justice [ICTJ], *Transitional Justice Issues: Reparations*, http://www.ictj.org/our-work/transitional-justice-issues/reparations.

[21] Khmer Rouge trials, G.A. Res 57/228, U.N. Doc. A/RES/57/228 (Feb. 27, 2003).

[22] UDHR, art. 8.

[23] ICCPR, art. 2(3).

[24] *Id.*, arts. 9(5), 14(6).

[25] U.N. Human Rights Committee, *General comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 16 (Mar. 29, 2004).

[26] Brianne McGonigle Leyh and Julie Fraser, *Transformative reparations: changing the game or more of the same?*, 8 CAMBRIDGE INT'L L. J. 39, 42 (2019).

far as possible, the consequences of the illegal act and to restore the situation that would have existed if the act had not been committed."[27] Moreover, in the 1927 Judgment in the Factory at Chorzów case, the Permanent Court of International Justice stated what is considered a guiding principle governing reparations to date, "that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish - the situation which would, in all probability, have existed if that act had not been committed."[28]

Even so, this definition has been criticised on the grounds that a "reparation cannot 'efface' [a violation], but it can rather avoid the negative consequences of the wrongful act."[29]

The international law community is increasingly regarding reparation not only as a means of effacing the violation a victim suffered, but also as a process through which healing can be dynamically conceived and provided. For instance, while Section 2(4) of the TRNUC Act generally defines reparation as "the compensation, facility or concession made to a victim",[30] instruments like the Rome Statute of the International Criminal Court, of which Seychelles is a State Party, identify additional factors within the concept of reparations, such as remedy, restitution, compensation, and rehabilitation.[31] Notably, restitution, compensation, and rehabilitation are substantive forms of reparation, discussed *infra*, while "remedy" has come to be understood as referring to the process through which these forms of reparation are provided.[32]

Seychelles has ratified various international treaties which recognise a victim's right to reparations.[33] All of these instruments underscore the State's obligation to provide reparations for victims of human rights violations and international crimes. This obligation and right has also been reflected in multiple soft law instruments,[34] and has risen to the status of a *jus cogens* or peremptory norm of international law.[35] On the regional level, the Republic of Seychelles has been a member of the African Union since 1976, and has ratified the African Charter on Human and Peoples' Rights,[36] the African Charter on the Rights and Welfare of the Child,[37] the OAU Convention Governing Specific Aspects of Refugee

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[27] Emanuela-Chiara Gillard, *Reparation for violations of International humanitarian law*, 85 INT'L REV. OF THE RED CROSS 529, 531 (2003).

[28] Case Concerning the Factory at Chorzów, Merits, Judgment, The Permanent Court of Int'l Just., p. 47 (Sep. 13, 1928).

[29] Luke Moffett, *Transitional Justice and Reparations: Remedying the Past?*, *IN* RESEARCH HANDBOOK ON TRANSITIONAL JUSTICE, p. 4 (Dov Jacobs ed., 2015).

[30] TRNUC Act, sec. 2(4).

[31] Rome Statute of the International Criminal Court [Rome Statute], art. 75, July 17, 1998, 2187 U.N.T.S. 90.

[32] The International Commission of Jurists have stated that "the term remedy is used to refer to a procedural remedy, while the term reparation refers to the obligation to provide restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition." *See* PRACTITIONERS' GUIDE, *supra*, at xiii.

[33] *See generally* ICCPR, *supra*, arts. 2(3), 9(5), 14(6); CAT, *supra*, art. 14, ICERD, *supra*, art. 6; ICPPED, *supra*, arts. 8(2), 20(2), 24; Rome Statute, *supra*, arts. 75, 79.

[34] *See* PRACTITIONERS' GUIDE, *supra*; Basic Principles of Justice, *supra*, at principles 4, 5; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, *supra*, at principles 4, 16, 20; Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (June 25, 1993), para. 27; Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, *supra*, art. 9; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra*, at principles 1-2; Draft Articles on the Responsibility of States *supra*, arts. 30, 31.

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

[36] African Charter on Human and Peoples' Rights ["Banjul Charter"], 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *ratified* 13 April 1992.

[37] African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), *ratified* 13 February 1992.

Problems in Africa,[38] and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.[39] While only the latter treaty, the Maputo Protocol, explicitly references the right to reparation, the Commission takes these regional human rights commitments as notable given the implicit understanding in human rights law that reparations are owed for violations of human rights. As such, Seychelles is accountable for abiding by the international and regional human rights standards of these instruments, including respect for victims' and communities' rights to a remedy and reparation in the wake of human rights violations.

3. Reparations Consistent with International Law

Under Section 3(7)(e)(i), it is an objective of the Commission "to determine … the appropriate reparations for victims".[40] While an "objective" is inherently aspirational rather than an explicit, binding duty, the Commission has nevertheless interpreted this provision to suggest that it must recommend reparations in each admissible and meritorious victim-based complaint submitted before it. Section 3(9) of TRNUC Act obligates the TRNUC to "abide by universally recognised legal principles and human rights norms" in the discharge of all of its functions,[41] which includes its recommendations on the provision of reparations. Accordingly, in considering its recommendations on reparations, the Commission has taken into account the State's commitments under those regional and international instruments, above, which form international law.

In the Commission's experience, a concept that the Government of Seychelles and broad sections of the population seemed to struggle with in relation to reparations was the notion that the obligation to pay reparations for human rights violations rests with the State.[42] While this principle is a bedrock of international human rights law, and is particularly clear from the various sources of international law listed above, including the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001) and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2006),[43] there appears to be a fundamental lack of appreciation in Seychelles of what human rights are to begin with, who is responsible for their protection, and what form(s) that responsibility may take. Consequently, the general public in Seychelles vocally objected to the notion

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[38] ORGANISATION OF AFRICAN UNITY [OAU], Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 46 (1976), *ratified* 11 September 1980.

[39] African Union [AU], Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ["Maputo Protocol"], July 11, 2003, art. 25, *ratified* 9 March 2006; *see also* AU, "African Union Member States," https://au.int/en/member_states/countryprofiles2.

[40] TRNUC Act, sec. 3(7)(e)(i). In particular, Section 3(7)(e)(i) of the TRNUC Act includes the objective of the Commission to determine "*appropriate* reparations for victims", without explicitly defining "appropriate" or the requirements for reparations, suggesting that the Commission is to interpret its application. *See id.*, sec. 3(7)(e)(i) (emphasis added).

[41] *Id.*, sec. 3(9).

[42] As was stated by the Inter-American Court of Human Rights (hereinafter "IACHR") in the Velásquez-Rodríguez v. Honduras case, "the objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible." This statement highlights the fundamental role of state responsibility in defining and providing reparations.

[43] *See generally* International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001).; *See generally* Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Mar. 21, 2006) [hereinafter "Basic Principles"].

that their taxpayer money would be used to compensate victims for the violations of the Government and the State. Additionally, following the transition of Government power in October 2020, Government authorities, namely the Minister of Finance, made his objection to the use of taxpayers' money in compensating Commission complainants very clear to the Commission. Underpinning that objection was the notion that today's taxpayers were not the persons responsible for the violations that had occurred and therefore should not be forced to make reparations for them.

Moreover, complainants themselves often informed the Commission that while they wanted compensation, they did not want taxpayers' money. In that regard, complainants urged the Commission to fund their compensation through the seizure of assets of all those who had enriched themselves under the reign of the SPUP/SPPF/PL /US administrations – the administrations under which the human rights violations had occurred. This idea was notably punitive, tied to a retributive sense of getting back at those who through corruption and power made themselves wealthy to the detriment of others. The Commission, however, was not mandated to investigate allegations of corruption, unless they were closely related to an alleged human rights violation (most notably the violation of abuse of office under Section 2(8)(l) of the TRNUC Act).[44] More importantly, the Commission sought to clarify to complainants that the point of reparations is not to punish those responsible but rather to provide redress for victims who have been wronged. While it was also not the mandate of the Commission to find the funds for the payment of compensation, the Commission does believe that the use of recovered funds, which also represent taxpayers' money that was stolen, to fund reparations may be more palatable to the general community of Seychelles and aid reconciliations efforts more broadly, reconciliation being a primary objective of the Commission. In that regard, it makes no judgment on the viability of the Government pursuing such recovery of ill-gotten wealth to fund the recommended Trust Fund for Victims.

In addition, the Commission recognises the interrelationship of reparations, reconciliation, and amnesty in the transitional justice process. As amnesty is recognised as an often-important aspect in fostering truth-seeking and reconciliation efforts, the full and frank disclosure of an amnesty petitioner being essential to uncover certain aspects of the truth and help society to heal, reparations provide the conceptual "other side of the coin" by giving victims both recognition of the violations they suffered and a chance at some form of compensation in fulfilment of the goal of justice. In that way, these two prongs work hand-in-hand to help the Commission "ascertain the truth" and "create an accurate and objective public record" that "help[s] bridge divisions caused by any violations", "provide[s] closure for the victims and perpetrators of the violations", and ideally "unite[s] the people of Seychelles around a common agenda that will help them move forward in confidence and with a sense of common purpose…"[45]

In Seychelles, perpetrators of human rights violations found by the Commission have the right to petition for amnesty for their responsibility for any violations pursuant to Section 12 of the TRNUC Act.[46] Notably, if that petition succeeds and amnesty is granted, the successful petitioner is thereafter

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[44] For complainants before the Commission, it appeared abundantly clear that many of those who held positions in the SPUP/SPPF/PL /US administrations as Government authorities, or in positions close to Government, exhibited wealth that could not be explained by reference to their employment income, and during the proceedings of the Commission, some of these individuals were subject of investigation and charge by the Anti-Corruption Commission in Seychelles. The fact that corruption had been rife in Seychelles throughout the reign of the SPUP/SPPF/PL /US administrations is set out in Volume II of this report.

[45] TRNUC Act, sec. 3(7).

[46] *Id.*, sec. 12; *see* Final Report, Volume IV.

shielded from any criminal or civil liability.[47] Indeed, Section 12(6) is a broad provision which grants the Commission's power to consider and grant an application of amnesty precedence over any existing national proceedings, as well as prohibiting the start of new proceedings, should that application be granted.[48] Thus, the amnesty power of the Commission not only purports to grant the successful petitioner protection from subsequent criminal proceedings but also purports to act as a barrier to a complainant instituting civil proceedings against that successful petitioner thereafter. Of concern to the Commission was not only the consistency of a grant of amnesty for human rights violations with international law—as set out in Volume IV—but also the consistency of the bar against a complainant's right to bring a civil action against a perpetrator with international law and the Constitution of the Republic of Seychelles.[49]

Yet, the Commission notes that Section 12(6) of the Act specifically protects a victim's right to reparations, as it continues on to provide that "[t]he amnesty shall not affect any order by the Commission for remedies, reparations or rehabilitation".[50] That is, the power of the Commission to grant amnesty, which bars a victim's potential opportunity to pursue civil damages in court, is without effect to the Commission's power to recommend reparations for that victim. Put another way, the reparations power of the Commission was evidently to satisfy the need of victims for additional compensation, and in that sense should be seen to cover or rectify the inability of victims themselves to pursue damages against a successful amnesty petitioner. Further, the Commission notes that its reparations power should be seen as more helpful than a prospective court proceeding, as, given that the great majority of the acts in question occurred 30-40 years ago, as a practical matter there is a high likelihood that most, if not all, civil claims would be deemed by courts to fall outside of relevant statutes of limitations and thus be time-barred. Therefore, the Commission considers that the victim's best hope for compensation, recognition of suffering, and the other core aspects of reparations discussed herein falls with the ability of the Commission, and its recommended successor body, to make recommendations for the reparations it finds that victims are owed.

4. Collective and individual reparations

Providing victims with reparations remains an essential aspect of transitional justice because it does not only acknowledge victims as rights-bearing citizens, but also provides accountability for specific past harms. This recognition serves the purpose of (re)gaining civic trust.[51]

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[47] TRNUC Act, sec. 12(6): "Notwithstanding any written law- (a) a criminal investigation or criminal or civil prosecution 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 therefore by the Commission; and (b) a perpetrators 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."

[48] *Ibid.*

[49] Notably, Chapter III, Part 4 of Seychelles's 1993 Constitution, specifically recognises the right to a remedy for the contravention of a right or freedom guaranteed by the Constitution and Part V mandates interpretation of that constitutional provision consistent with Seychelles international obligations. Constitution of the Republic of Seychelles, Constitution of the Republic of Seychelles (Preparation and Promulgation) Act, 1992, Act 2 of 1992 (21 June 1993), Chapter III, Part V, Art. 48(a), [hereinafter "Constitution of 1993"].

[50] TRNUC Act, sec. 12(6).

[51] NAOMI ROHT-ARRIAZA & KATHARINE ORLOVSKY, A COMPLEMENTARY RELATIONSHIP: REPARATIONS AND DEVELOPMENT 3 (Int'l Ctr. for Transit'l Just., 2009).

The two main categories of reparations are collective and individual reparations. Individual reparations address specific harms to specific victims, whereas collective reparations address collective harms experienced by entire communities and harms to social cohesion.[52] Collective reparations are frequently provided when there have been such massive violations of human rights that individual reparations are impractical, if not impossible, to implement and can serve to re-establish social solidarity as well as to "maximize the effectiveness of existing resources."[53]

As already noted above, under the TRNUC Act, it is an objective of the Commission to provide recommendations on reparations for individual victims whose complaints have been determined to be established to a balance of probabilities.

In certain cases, implementing only collective reparations or only individual reparations by themselves might be ineffective, failing to address certain community or individual-based harm. For this reason, and in the spirit of the pioneering work of the African human rights system, which recognises the rights of individuals *and peoples*, the Commission has recognised that collective and individual reparations should be used in concert as complementary measures. In the particular context of Seychelles, where to be eligible for reparations an individual complainant of human rights violations has to have come before the Commission and presented their complaint, the primary focus of the Commission is on the individual reparations to be made to the victim or victims of any violation found. However, as a broader step towards reconciliation, national healing, and non-repetition, the Commission has also advocated for collective reparations in the form of a memorial to all victims and the establishment of a public Information Centre, such as a museum to the work of the Commission and in which its public record of proceedings is accessible to all, *inter alia*.

5. Types of Reparations

5.1 Monetary and non-monetary reparations

As already identified, the five primary types of reparation are (1) restitution; (2) compensation; (3) rehabilitation; (4) satisfaction; and (5) guarantees of non-repetition. While each type can potentially take the form of either monetary or non-monetary reparation, "compensation" is primarily provided to victims in the form of monetary reparation, while the other four more often take the form of non-monetary reparation.[54]

In that regard, financial compensation is often "awarded for economically assessable damage", which primarily pertains to material goods and, in the context of Seychelles, mostly relates to the violations of unjustified acquisition of property or business, wrongful denial of the right to employment, and wrongful termination of employment, all of which had economic consequences.[55] While non-monetary reparations are often used to address internal injuries, referred to by the Inter-American Court of Human Rights as "moral damage", such as mental and physical pain,[56] in the context of the Seychelles, monetary compensation was considered by complainants as an important component of reparations for moral damage also. In that regard, it was quickly made clear to the Commission that monetary compensation was foremost in the minds of its complainants; nevertheless, the Commission considered

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[52] *Id.*

[53] *Id.* At 2.

[54] *See* UN Basic Principles, *supra*.

[55] PRACTITIONERS' GUIDE, *supra*, at 189; UN Basic Principles, *supra*, at principle 20.

[56] PRACTITIONERS' GUIDE, *supra*, at 191.

it important to consider in detail the various forms of non-monetary compensation to ensure a holistic approach to reparations recommendations for its complainants and thereby have the greatest prospect of achieving a sense of justice, reconciliation, and national unity.

While the focus of the complainants was thus on monetary compensation, the Commission also prioritises the importance of non-monetary reparations, which acknowledge the suffering, pain, and loss of victims and restore the dignity of victims on a potentially more profound level than financial compensation has the capacity to do. The Commission's process in identifying the quantum of monetary damages, in light of its complementary approach to non-monetary reparations, is articulated further below.

5.2 Types of non-monetary reparations

Satisfaction: One of the most critical forms of reparation is the pursuit and acceptance of truth, but also of responsibility and fault.[57] Principle 22 of the UN Basic Principles lists as measures of satisfaction the "verification of the facts and full and public disclosure of the truth", "the search for the whereabouts of the disappeared" — or the right to investigation, "an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim", a "public apology including acknowledgement of the facts and acceptance of responsibility", "commemorations and tributes to the victims" and "reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."[58]

An international legal consensus recognises apologies — sometimes involving high-ranking officials in public ceremonies and broadcast on national media — as one of the most important forms of satisfaction as it is an "expression of sorrow, shame, guilt, or desire to relieve the victims' pain and anger". [59] Additionally, the change of names of public spaces, the establishment of days of commemoration, and the creation of museums and parks dedicated to the memory of victims are often regarded as effective forms of satisfaction. [60]

In discussing these types of measures with its Reparations Focus Group and during its Plenary Meeting of Victims, there was broad consensus for a public apology and for the establishment of a memorial dedicated to victims. However, there was also general objection to the naming of public spaces in the names of individual victims. The general sense was that the Seychellois needed to close this chapter of their history, rather than, in their terms, "keeping it alive", and it was felt that the public naming of streets or other public spaces was not conducive to that closure.

Restitution: The term "restitution" refers to measures which "restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred", as defined by Principle 19 of the Basic Principles.[61] While restitution can take the form of monetary reparation, it can take the form of non-monetary reparation, including restoration of liberty, enjoyment of human rights, return of property, restoration of identity, reputation,

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[57] *Id.*, at 209.'

[58] UN Basic Principles, *supra*, at Principle 22; PRACTITIONERS' GUIDE, *supra*, at 209.

[59] Margaret Urban Walker, *Restorative Justice and Reparations*, 37 J. OF SOC. PHIL. 377, 385 (2006); FALK, *supra*, at 494.

[60] Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Reparations programmes, p. 22, HR/PUB/08/1 (2008).

[61] UN Basic Principles, *supra*, at principle 19; *See also* U.N. Committee against Torture, *General Comment No. 3: Implementation of article 14 by States parties*, para. 8 (Dec. 13, 2012).

family life, employment and citizenship, return to one's place of residence, freedom from detention and the release of wrongly detained persons, the revocation of an unlawful judicial measure, new trials, reversal of convictions and expungement of criminal records.[62]

In the context of the Commission, the return of property unjustifiably seized was the main concern of the complainants, but other high priorities also included recognition of the unlawfulness of acts of imprisonment, detention, torture, and other abuses of Government power. This recognition was given in individual determinations on the veracity of the complaints that had been made. For complainants, having the Commission investigate their individual allegations and validate that their human rights were violated was a step towards restoring the reputation of the complainant in the society and helping the complainant to heal and move on in that way and other ways. However, it must be also noted that not all complaints of human rights violations alleged before the Commission were able to be proven to the standard of a balance of probabilities. Part of this resulted from confusion on the part of applicants as to what acts constituted violations of human rights, and in a number of instances, complainants alleged victimisation and other acts of discrimination by Government that had no basis in fact, even though they were perceived as having been so by the complainant. To give a simple example, some complaints alleged denial of the right to employment, whereas employment files showed a history of failures to appear for work and a pattern of resignations. There may have also been cultural elements that underpinned feelings of victimisation as professionalism in the public service was equated to loyalty to the Government that had taken power with the Coup d'état of 1977. As such, the Commission has found that active supporters who exhibited similar failings in their workplaces may not have been subjected to the same consequences as those not so closely aligned.

Rehabilitation: Is generally understood as "the process of restoring the individual's full health and reputation after the trauma of a serious attack on one's physical or mental integrity. [...] It aims to restore what has been lost. Rehabilitation seeks to achieve maximum physical and psychological fitness by addressing the individual, the family, local community and even the society as a whole." [63]

Traditionally, rehabilitation measures take the form of medical, physical and psychological care as well as legal and social services.[64] However, rehabilitation initiatives can also extend to scholarships, vocational assistance, social reintegration, and the rectification of criminal records, which might also be a form of restitution.[65] In many instances, multiple forms of rehabilitation will be instituted. For example, in the case of the Plan de Sánchez Massacre, the Inter-American Court ordered the State of Guatemala to provide free medical aid and medicine, as well as psychological and psychiatric treatment programmes for the victims free of cost.[66]

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[62] GILLARD, *supra*, at 531; Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Reparations programmes, p. 7, HR/PUB/08/1 (2008); Thomas M. Antkowiak, *An Emerging Mandate for International Courts: Victim-Centered Remedies and Restorative Justice*, 47 STANFORD J. OF INT'L L. 279, 294 (2011).

[63] SHELTON, *supra*, at 275.

[64] Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Reparations programmes, p. 7, HR/PUB/08/1 (2008).

[65] *Id.* at 7, 25-7; *See generally* GILLARD, *supra*; UN Basic Principles, *supra*, at principle 24 (The draft Basic Principles include an additional form of reparation: rehabilitation. Principle 24 provides that rehabilitation should include medical and psychological care as well as legal and social services); ANTKOWIAK, *supra*, at 296; PRACTITIONERS' GUIDE, *supra*, at 207.

[66] Case of Plan de Sánchez Massacre v. Guatemala, Reparations, Judgment, Inter-Am. Ct. H.R., paras. 106-08, 117 (Nov.19, 2004).

Section 2(3) of the TRNUC Act expands the definition of "rehabilitation" by involving not only the mental support of victims but also of perpetrators: "'Rehabilitation' means the psychological or mental support offered to both victims and perpetrators in need of such support, with a view to their achieving complete closure, including restoring their credibility in society [...]."[67] This interpretation embraces the 1981 WHO Expert report which introduced the concept of community-based rehabilitation, suggesting that the community should take an active role in the rehabilitation of an individual.[68]

Throughout its mandate, the Commission recognised the need to provide psychological support for complainants and support for perpetrators, but as was outlined in Volume I, the Commission was denied the allocation of any resources to do so and was dependent on the availability of volunteer assistance. Nonetheless, the Commission's reparations policy does contain recommendations that such support be provided to the victims of human rights violations. The fact that such support is needed has been obvious to the Commission, and while many complainants before it experienced a catharsis as a result of having their stories heard, others were haunted thereafter by reliving their experiences before the Commission and on social media, where many were frequently targeted thereafter.

Guarantees of non-repetition: Guarantees of non-repetition are measures that safeguard against the repetition of previously violated human rights. The UN Basic Principles classify the jurisprudence and practice of "guarantees of non-repetition" as encompassing, *inter alia*, orders for States to investigate, identify, and prosecute perpetrators of human rights violations, interventions such as maintaining civilian authority over military and security forces, strengthening the independence of the courts, protecting legal, medical, media, and related staff and human rights defenders, promotion of international human rights standards in public service, promoting mechanisms for preventing and monitoring social conflicts and their resolution, human rights training programs for various types of state officials, and directives to improve the conditions of prison systems and detention practices.[69] Since the demand of structural changes is considered the key component of guarantees of non-repetition, such guarantees are often achieved through constitutional and legislative changes demanded by international jurisprudence.[70]

As set out in the Recommendations of the Commission at the end of this Final Report, the Commission has recommended various reforms aimed at ensuring non-repetition of human rights violations in Seychelles more broadly, including

- The strengthening of human rights bodies and other independent bodies with investigatory powers into corruption or abuses of power;
- Training of police on grounds of arrest and detention protocols;[71]
- Introduction of Human Rights Education in the national curriculum and the promotion of Human Rights Friendly schools.

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[67] TRNUC Act, sec. 2(3).

[68] WHO EXPERT COMMITTEE ON DISABILITY PREVENTION AND REHABILITATION, DISABILITY PREVENTION AND REHABILITATION 9 (World Health Org. Tech. Support Ser., 1981); *see also* CLARA SANDOVAL VILLALBA, REHABILITATION AS A FORM OF REPARATION UNDER INTERNATIONAL LAW 9 (Redress, 2009).

[69] UN Basic Principles, *supra*, at principle 23.

[70] PRACTITIONERS' GUIDE, *supra*, at 141.

[71] *See for example* UN Peacekeeping, Human Rights Standards in Arrest and Detention: UN Peacekeeping PDT standards, Specialized training Material for Police 1st edition (2009).

- Training of those engaged in Law Enforcement on Human Rights, and the rights of the individual.

5.3 Lessons Learned from Truth Commissions, International Tribunals, and Regional Human Rights Systems

While the Commission appreciates that reparations should be recommended and implemented in a case-by-case approach to ensure they are adequate and proportionate to the circumstances of the case in question, it nonetheless considered that lessons could be learned from the reparations policies of other truth commissions, international tribunals, and regional systems that have addressed human rights violations in a similar manner to the Commission. In that regard, the Commission's examination of the experiences of other institutions grappling with reparations for human rights violations informed the policy eventually adopted by the Commission in consultation with its complainants.

A. No Reparations

Criticisms of the International Criminal Tribunal for the former Yugoslavia (hereinafter "ICTY") and the International Criminal Tribunal for Rwanda (hereinafter "ICTR") demonstrate the general need for reparations for human rights abuses. While both the ICTY and ICTR acknowledged the suffering of victims, their sentences and lack of references to reparations indicated that they were primarily retributive mechanisms, prioritising deterrence, and lacking resources for reparation.[72] For example, throughout its 21-year existence, the ICTR's judges never issued an order for restitution. Instead, both the ICTY and ICTR referred the victims before them to their national systems to seek reparation.[73]

This criticism of the ICTY and ICTR and support for more recent developments in international criminal law indicate that their approach to reparations is no longer tenable.[74] Younger institutions like the International Criminal Court (hereinafter "ICC") thus have explicit reparation policies and victims' rights embedded in their founding statutes. Notably, in 2002, the ICC's Trust Fund for Victims was created to help provide reparations and assistance to victims of crimes under the ICC's jurisdiction.

B. Monetary v. Non-monetary Reparations

Chile's National Commission for Truth and Reconciliation (1990-1991) is regarded as one of the most effective truth commissions in implementing reparations recommendations.[75] Victims' requests for non-monetary reparations resulted in the implementation of programs such as, *inter alia*, the Investigation Program about the Final Destination [of victims], the Museum of Memory and Human Rights, and monuments and memorials. Even so, its implemented recommendations have been

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[72] Allan Ngari, *Reparations for victims matter as much as Kabuga's trial*, ISS TODAY (June 2, 2020), https://issafrica.org/iss-today/reparations-for-victims-matter-as-much-as-kabugas-trial; Christine Evans, *Reparations for Victims in International Criminal Law*, in Online Festschrift in honour of Katarina Tomaševski (Raoul Wallenberg Inst., 2011), p. 2, http://rwi.lu.se/what-we-do/academic activities/publications/tomasevski/.

[73] Liesbeth Zegveld, *Victims as a Third Party: Empowerment of Victims?*, 19 INT'L CRIM. L. REV. 321, 325 (2019).

[74] EVANS, *supra*.

[75] VÍCTOR ESPINOZA CUEVAS ET AL., TRUTH COMMISSIONS: AN UNCERTAIN PATH?: COMPARATIVE STUDY OF TRUTH COMMISSIONS IN ARGENTINA, CHILE, EL SALVADOR, GUATEMALA AND SOUTH AFRICA FROM THE PERSPECTIVES OF VICTIMS, THEIR RELATIVES, HUMAN RIGHTS ORGANIZATIONS AND EXPERTS 29 (Ass'n for the Prevention of Torture, 2001).

criticised as insufficient for being limited, in practice, primarily to economic and social welfare.[76] The implemented programs for the return of exiled and political prisoners took the form of monthly pensions to victims, but failed to provide social and psychological support for families and individuals who experienced loss.[77] The Chilean experience also highlighted the importance of reparation policies that enabled a long-term commitment "that necessarily extends beyond one period of government",[78] as well as the necessity of being responsive to other impacts of violations on victims' lives.[79]

Symbolic reparations are non-monetary in nature, often taking the form of public apologies, museums, statues, and other public displays of acknowledgement and memorialisation. Monetary reparations, it must be recognised, can also be symbolic, as by their nature they acknowledge past suffering or harm. However, this form of reparation results in compensation paid to eligible survivors, either in the form of direct cash payments or scholarships, or in restoration of land or property, tax incentives, medical or psychological treatment, or other forms.

It has been widely recognised that these two aspects of reparations are most effective when implemented together.[80] Symbolic reparations by themselves may appear empty to victims, whereas victims before truth commissions in Argentina, Chile, El Salvador, Guatemala, and South Africa have analogised monetary reparations alone to an effort by the State to "buy off suffering", often offending victims. A South African victim stated, "[…] they never gave us what they promised. We should have known, this is only because we are poor, if we were not poor we could not have accepted this temporary reparation."[81]

In addition to offending some victims when implemented without request, monetary reparations are often simply inadequate in providing necessary long-term assistance for victims and guarantees of non-recurrence for societies. Ghana's National Reconciliation Commission (2003-2004) recommended a comprehensive reparations programme of both monetary and non-monetary reparations, including apologies, a memorial, a monument, restitution of property, a national day of remembrance, scholarships, health benefits, and reforms within prisons, the police, and the military. However, only the monetary reparations were ever implemented.

It is generally considered that exclusively implementing monetary reparations does not provide beneficiaries with the long-term assistance that they might require, and experience shows that many victims often experience physical, emotional, and medical struggles years after reparations programmes are implemented.[82] In that respect, monetary reparations alone have proven unlikely to satisfy such long-term needs.

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[76] Víctor Espinoza Cuevas et al., Truth Commissions: An Uncertain Path?: Comparative Study of Truth Commissions in Argentina, Chile, El Salvador, Guatemala and South Africa From the Perspectives of Victims, Their Relatives, Human Rights Organizations and Experts 29 (Ass'n for the Prevention of Torture, 2001).

[77] Luke Moffett & James Gallen, From Truth to Repair: Implementing Truth Commissions' Recommendations On Reparations 15-25 (Reparations, Resp. & Victimhood in Transit'l Soc'ies, 2020).

[78] Cristián Correa et al., *Reparations and Victim Participation: A Look at the Truth Commission Experience*, In Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity, pp. 11, 18 (Carla Freshman et al. eds., 2009).

[79] *Id.*

[80] *See* Lisa Magarell, *Reparations in Theory and Practice*, ICTJ (2007), https://www.ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf.

[81] Espinoza Cuevas et al., *supra*, at 30-31.

[82] Regina Akosua Dede Baiden, *In the Aftermath of Reparations: The Experiences of Female Beneficiaries of Ghana's Reparations Programme*, 14 J. of Peacebuilding & Dev. 22, 31 (2019).

C. Individual and Collective Reparations

There is a general international consensus that collective reparations with individualised components is, in most contexts, the most appropriate form of reparations. In the criminal context, in March 2021, Trial Chamber XI of the ICC ordered reparations against Bosco Ntaganda for 18 counts of war crimes and crimes against humanity committed in Ituri, Democratic Republic of the Congo, in 2002-2003. These reparations included restitution, compensation of $30 million USD, rehabilitation, satisfaction measures, and symbolic reparations.[83] The Chamber found that these collective reparations "may address the harm that victims suffered on an individual and collective basis" as they contained individualised components and benefits that "respond to the specific needs and current situation of individual victims within the group".[84]

Chile's National Commission for Truth and Reconciliation (1990-1991) provides an example of how individual reparations alone might be insufficient. The commission faced criticism among reparation beneficiaries in the Mapuche indigenous communities. Members of these communities claimed that individual reparations, which only covered children under the age of 25, had a stigmatising effect on these communities, causing feelings of envy and rejection among individuals and leading to social fractures and even crime, such as theft. [85]

Sierra Leone's Truth and Reconciliation Commission (2000), in contrast, was by and large able to avoid the resentment which the Chilean truth commission faced. Victims before the Sierra Leonean truth commission had expressed greater interest in social services than in individual compensation. For this reason, in addition to practicality concerns and the severe poverty caused by the conflict, the commission provided reparation in the form of health care, pensions, education, skills training, micro-credit projects, and symbolic reparations. It avoided providing individual cash payments alone, cautious that they might have led to increased division within the community, opposed to "social solidarity".[86]

The success of the Sierra Leonean approach over the Chilean approach does not necessitate that both individual and collective reparations are always ordered or that one is superior or more effective than the other. Instead, this distinction suggests that truth commissions should assess the impact of these options on their beneficiaries with an eye toward comprehensiveness and complementarity.

It is worth noting that truth commissions and tribunals have differed in how they determine for which victims to order reparations. South Africa's Truth and Reconciliation Commission (1996-2003) recommended reparations for victims of only four categories of human rights violations — (1) killing; (2) torture; (3) severe ill-treatment; and (4) abduction — and who were found to be victims by the truth commission.[87] This approach resulted in fewer than 22,000 victims recognised by the commission, despite there having possibly been over 100,000 victims, leaving many to view the truth commission's reparations policy as a betrayal and "false reconciliation".[88] The Sierra Leonean truth commission adopted a broader definition of who could benefit from reparations, which did not limit eligibility to those that had participated in the proceedings of truth commission, and made provision for victims who had been "reluctant to give testimonies due to fears of stigma and rejection in the community".[89]

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[83] The Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06-2659, Reparations Order, paras. 201-13 (Mar. 8, 2021).

[84] *Id.* at para. 189.

[85] ROBERTA BASIC HERZFELD ET AL., MEMORIAS RECIENTES DE MI PUEBLO 1973-1990 (LOM ed., 1998).

[86] MOFFETT & GALLEN, *supra*, at 6-27; EVANS, *supra*, at 178.

[87] MOFFETT & GALLEN, *supra*, at 8-23.

[88] *Id.*

[89] EVANS, *supra*, at 178.

Guatemala's Commission for Historical Clarification (1997-1999) and the Chilean National Commission took similar approaches to ordering reparations for indirect victims. In addition to direct victims, reparations were ordered for family members of direct victims if the direct victim did not survive.[90] Victims and civil society organisations have criticised this approach, as it resulted in indirect victims of torture, exile, and prolonged administrative detention without trial not receiving reparations.[91] It has further been noted that the "exhaustive process" to determine which categories of victims will receive reparations might cause new harm or trauma to applicants. This is especially the case for crimes that are more difficult to prove over time, such as torture and sexual abuse. Such a process may exclude many victims who never received medical attention for the initial violation or are fearful to speak about their experience, causing them to "choose between revisiting the experience and foregoing reparations, thus producing a further form of victimization".[92]

The reparations proposal of Timor-Leste's Commission for Reception, Truth and Reconciliation (2002-2005) highlighted that "we are all victims - but not all victims are equal", and identified six categories of victims that would receive reparations: individuals who suffered torture, suffered sexual violence, had mental and physical disabilities, widows and single mothers, children, and communities particularly affected by a high concentration of violence.[93] While this approach inevitably excluded other categories of victims, it was generally applauded for working closely with victims in the above-listed categories to provide numerous forms of non-monetary reparations and rehabilitative support. These victims received medical and psychosocial support, scholarships for children, and symbolic measures, including commemorations and memorials.[94]

Drawing on these past experiences, the Commission has determined that all victims who it determines to have suffered human rights violations warrant reparations. Further, the Commission was very aware that not all victims of the Coup d'état of 1977 had filed complaints before it and therefore not all victims of human rights violations falling within the mandate of the Commission would receive a Commission recommendation on reparations. In that respect, the Commission considered that individual awards to the complainants who did come forward could have the potential to cause further divisions in Seychelles and hinder broader reconciliation efforts. This fact was raised before the Commission by complainants that had filed before it and who were concerned about the potential unfairness to other victims. Moreover, there was a more general point made that following the Coup d'état of 1977 and throughout the Coup administration's hold on power, all Seychelles suffered, even those aligned to the regime, many of whom also lived in fear of falling out of party favour. To accommodate this specific concern the Commission has made a broader based recommendation for reparations to a limited number of persons that it did hear and who did not make a formal complaint before the Commission prior to the expiration of the time limit for the filing of complaints. Of importance to the Commission was that one of those complainants made an allegation of rape and did not come forward to the Commission until

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[90] Claudia Paz & Paz Bailey, *Guatemala: gender and reparations for human rights violations*, IN WHAT HAPPENED TO WOMEN?: GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS, p. 109 (Ruth Rubio-Marín ed., 2006); ESPINOZA CUEVAS, *supra*, at 2.

[91] ESPINOZA CUEVAS, *supra*, at 2.

[92] Lisa Magarrell, *Reparations in Theory and Practice,* REPARATIVE JUSTICE SERIES, p. 8 (2007), https://ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf.

[93] Chega! Final Report, Commission for Reception, Truth and Reconciliation in East Timor (CAVR) (2005), Part 10, p. 41, https://www.etan.org/etanpdf/2006/CAVR/10-Acolhimento-and-Victim-Support.pdf.

[94] EVANS, *supra*, at 112-13.

the last months of its mandate, due to the shame the victim felt as a result of that severe human rights violation.[95]

5.4 Feasibility of reparations

While critics advocate for reparations to be inclusively issued for victims, they warn that this breadth should not be overzealously extended to the actual types of reparations issued. Truth commissions in Argentina, Chile, El Salvador, Guatemala, and South Africa each recommended a broad array of reparations, which required efforts that were nearly impossible to implement.[96] This resulted in the majority of recommended measures not being implemented, and most of the measures that were implemented being monetary reparations.[97]

However, when promises of far-reaching reparations are effectively implemented, the impact can be extraordinary. For example, some comprehensive, non-monetary reparation programmes in Argentina and Chile were well-implemented and positively received. Chile implemented a specialised healthcare system for survivors and victims' families, while Argentina implemented a programme to locate children of political detainees and the disappeared who were removed from the custody of their families.[98] It is crucial that, in rendering reparations recommendations, truth commissions consider their State's capacity to invest in and implement such programmes.

In addition to balancing breadth with capacity, truth commissions should provide reparations consistently to similarly situated victims. Despite its progressive reputation with respect to ordering reparations, the Inter-American Court of Human Rights has received criticism for providing similarly situated victims with inconsistent reparations.[99] While the breadth of reparations should be determined on a case-by-case basis, the Commission considers that truth commissions like itself should strive to not emulate that practice, but rather establish consistent and transparent standards and procedures to apply across the cases before them.

As is detailed further below, the Commission took both of these important factors into account in the design of its reparations policy.

5.5 Specific forms of reparations

Memorials and monuments and exhibitions. Many truth commissions have recommended memorials and monuments as symbolic reparations, and many States have constructed them. While there are accounts of victims seeking the construction of memorials and monuments, critics argue that they portray the victim as an inanimate object and relegate the spectator to a passive role.[100] Experts in symbolic reparations and art history encourage more immersive experiences, such as interactive exhibitions, that enable the spectator to actively self-reflect.[101] One example of such an exhibition is the

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[95] See Volume II, Rape and Sexual Assault.

[96] ESPINOZA CUEVAS, *supra*, at 28.

[97] *Id.*

[98] ICTJ, ICTJ Program Report: Reparative Justice, https://www.ictj.org/news/ictj-program-report-reparative-justice.

[99] *See e.g.* Arturo J. Carillo, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, *IN* THE HANDBOOK ON REPARATIONS, pp. 529-30 (Pablo de Greiff ed., 2016); ANTKOWIAK, *supra*, at 290.

[100] Robin Adéle Greeley et al., *Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights*, 14 INT'L J. OF TRANSIT'L JUST. 165, 168-73 (2020).

[101] *Id.*

"Yuyanapaq: Para Recordar" photo exhibition of 2003, which can be found in Peru's Ministry of Culture and online.[102] This photo exhibition portrays a visual account of the 1980-2000 internal armed conflict in Peru, shedding light on the more than 69,000 individuals the Peruvian Truth and Reconciliation Commission found to have been victims.

While Peru's photo exhibition was well-received, it sits in stark contrast to the truth commission's Ojo Que Llora ("Eye that Cries") monument to memorialise the same internal armed conflict.[103] Not only were victims not consulted throughout the design phase, but the memorial also included names of both deceased victims and perpetrators without differentiation. This decision led to public verbal and physical attacks against the monument, preventing "true reconciliation".[104]

State-constructed monuments, even if sought by victims, have consistently been criticised for not taking victims' guidance into account, which inevitably exacerbates tensions and increases the likelihood of backlash. In the Cotton Field case before the Inter-American Court, non-monetary reparations were encouraged for families of female victims murdered in Mexico.[105] The Court ordered the construction of the Flor de Arena monument that would be unveiled at a ceremony during which the State would publicly acknowledge its international responsibility. However, the State barely included victims' participation in the conceptualisation and execution of the monument. In response to the unveiling ceremony, the State was criticised for its scripted and insincere apologies, and the exclusion of high-ranking officials. Furthermore, as the Flor de Arena monument was constructed in the absence of additional non-monetary reparations, the monument was criticised for being prioritised over measures that would more directly and effectively seek justice, such as the investigation of disappearances and murders.[106]

Also before the Inter-American Court was the Villatina Massacre case, which addressed the murder of eight children by police in Medellín, Colombia. The Court ordered the construction of a memorial, but the State did not consider any requests of the victims' families. Instead of portraying all eight victims with their names, designed by a human rights-experienced artist, the memorial depicted three children naively playing.[107] The Symbolic Reparations Research Project (SRRP), which is a network of legal and humanities scholars, argues that this depiction was too familiar of an image, failing to achieve the purpose of such memorials, which is to defamiliarise the spectator and provoke reflection.[108] In order for memorials and monuments to be an effective form of non-monetary reparation, the Commission therefore considers that their design and execution must involve the victims themselves.

The Commission also considered instances of false awards of monetary compensation. For example, in 2006, various courts in the Democratic Republic of the Congo ordered monetary reparations in cases concerning mass rape in Songo Mboyo village. In response to the government's failure to provide

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[102] Yuyanapaq: Para Recorder, Visual Account of the Internal Armed Conflict in Peru, 1980-2000, Inst. of Democracy and Hum. Rts., https://idehpucp.pucp.edu.pe/yuyanapaq.

[103] *See generally* Valérie Robin Azevedo and Dorothée Delacroix, *Categorización étnica, conflicto armado interno y reparaciones simbólicas en el Perú post - Comisión de la Verdad y Reconciliación (CVR)*, Nuevo Mundo Mundos Nuevos (2017).

[104] GREELEY, *supra*, at 179.

[105] Case of González *et al.* (*"Cotton Field"*) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., paras. 109-32 (Nov. 16, 2009) [hereinafter "Cotton Field Judgment"].

[106] Mauricio Rodríguez, *Víctimas abuchean a autoridades por inauguración de monumento en Juárez*, PROCESO (Nov. 7, 2011), https://www.proceso.com.mx/nacional/2011/11/7/victimas-abuchean-autoridades-por-inauguracion-de-monumento-en-juarez-94483.html.

[107] Robert Musil, *Monuments*, *In* Posthumous Papers of a Living Author, p. 62 (Eridanos Press, 1988).

[108] *Id.*; GREELEY, *supra*, at 173.

compensation and publicly acknowledge the violations carried out, the U.N. Joint Human Rights Office and U.N. Women instituted an interim measure offering women in the village a boat to enable them to sell their products in local markets.[109] While regarded as a "gesture of solidarity", U.N. Women and the U.N. Development Programme found this measure to be an insufficient form of reparation, asserting that it merely constituted international aid due to the government's lack of participation and support.[110]

Another example of a "false" non-monetary reparation is from 2007, when Peru approved and implemented a reparations program recommended by Peru's Truth and Reconciliation Commission to address human rights abuses committed during the 2001-2003 internal conflict. The program financed the construction and development of low-income and native communities affected by violence, including irrigation systems and community infrastructure. While these projects benefitted more than 1,800 communities, it was argued that they constituted obligations that the state should be responsible for even in the absence of human rights abuses. The projects, including the designs made, and resources allocated, did not serve a remedial purpose.[111]

In consideration of the above experiences of diverse transitional justice mechanisms, the Commission determined that while its recommendations should be informed by case-by-case analyses, they should also be informed by the critiques of preceding policies, encapsulated in the following principles: (1) reparations should always be provided for human rights abuses; (2) monetary reparations should be implemented alongside complementary non-monetary reparations; (3) attention must be paid to State capacity for and the practicality of implementing recommendations, including whether requisite implementation and monitoring mechanisms are feasible; (5) victims should be consulted in the process of designing and implementing reparations; and (6) reparations should be provided consistently to similarly-situated victims.

6. Victim-Centred Approach to Reparations

6.1 Learning from the Inter-American Court of Human Rights

Victims' perspectives concerning State-sponsored abuses have traditionally been ignored by international human rights and humanitarian law.[112] In that respect, the Inter-American Court's reparations judgments focusing on non-monetary remedies have been widely popular with victims. Their popularity is due to the IACHR's approach to ordering non-monetary remedies that respond to the victim's wishes "for recognition, restoration, and accountability" and, furthermore, that "engage victims in crafting their own means to restoration".[113]

In contrast to the IACHR, the European Court of Human Rights (hereinafter "ECHR") historically favours a monetary compensation approach, which has been the focus of much criticism, neglecting restorative measures for the individual. Furthermore, the ECHR refuses to require governments to

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[109] Press Statement, OHCHR, UN boat brings help to Congolese victims of sexual violence (Feb. 18, 2011), http://www.ohchr.org/EN/NewsEvents/Pages/UNBoatForCongoleseVictims.aspx.

[110] UN MONUSCO News, UN Supports Songo Mboyo Rape Victims in the DRC (Feb. 8, 2011), https://monusco.unmissions.org/en/un-supports-songo-mboyo-rape-victims-drc; REPORT OF THE KAMPALA WORKSHOP, REPARATIONS, DEVELOPMENT AND GENDER 7 (UN Women & UDNP, 2010).

[111] CARLOS MARTÍN BERISTAIN ET AL., CONTRIBUTION OF TRUTH, JUSTICE, AND REPARATION POLICIES TO LATIN AMERICAN DEMOCRACIES 244-46 (Inter-Am. Inst. of Hum. Rts., 2019).

[112] M. Cherif Bassiouni, *International Recognition of Victims' Rights*, 6 HUM. RTS. L. REV. 203, 204 (2006).

[113] ANTKOWIAK, *supra*, at 281.

investigate infractions — which is a legal obligation of all States Parties to the European Convention — likely due to the time and political risks such investigations would involve.[114] This practice often does not align with victims' wishes for criminal investigations and "the sanction of perpetrators [which] are almost universally demanded after serious violations".[115] Including victims in the reparations process can help strengthen the rule of law, human rights, and democracy in a given State,[116] and should not be viewed solely as a method of comprehending victims' conditions and needs or in turn persuading victims to support certain initiatives, but should contribute significantly to ensuring that victims obtain actual advantages that aid them in their life. Victims must be able to see their experiences reflected in the responding remedies.[117] In that respect, victim intervention "should contribute as well to linking their experiences with the rest of society, as a way to help (re)build trust among victims, and with the rest of society, including government."[118] Through such dialogue and consultation, victims "feel recognised not only as actors and allies but also as full rights-holders with capacity to make proposals and contribute."[119]

The IACHR's victim-centred approach has been well-received due to its capacity to provide reparations that reflect victims' ability to craft their own means to restoration. The victim-centred approach can be a crucial measure in rebuilding civil trust in the government and healing the relationship between victims and the State. A truth commission is an ideal setting for victims to establish their ability to engage effectively and to sensitise policymakers to the needs and circumstances of victims. At the very least, this engagement can aid in the implementation of a commission's recommendations.[120]

The following section examines an identity-based approach as a requisite extension of the victim-centred approach. It is imperative for truth commissions to take victims' identities into consideration in order to recommend reparations that effectively represent the victims they intend to aid. Identity discourse has the ability to send "powerful messages and reflec[t] particular motivations meant to achieve certain goals".[121] In order to provide reparations that are well-received by the victims, their heterogeneity cannot be ignored.[122]

6.2 Identity-based approach

As set out above, pursuant to Section 3(9) Act, the TRNUC must abide by universally recognised legal principles and human rights norms.[123] To create a comprehensive reparation policy that fulfils this mandate, the Commission considered it important to address relevant principles and norms regarding a spectrum of non-monetary reparations and the concept of identity.

6.3 Gender identity and non-monetary reparations

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[114] Philip Leach, *Beyond the Bug River: New Approaches to Redress by the European Court of Human Rights*, 10 EUR. HUM. RTS. L. REV. 148, 148-151 (2005).
[115] ANTKOWIAK, *supra*, at 283.
[116] CORREA ET AL., *supra*, at 1.
[117] *Id.* at 10.
[118] *Id.*
[119] *Id.*
[120] *Id.* at 23-5.
[121] Valerie M. Meredith, *Victim identity and respect for human dignity: a terminological analysis*, 91 INT'L REV. OF THE RED CROSS 259, 262 (2009).
[122] CORREA ET AL., *supra*, at 8.
[123] TRNUC Act, *supra*, at section 3(9).

A gender-based approach enables the application of nuanced solutions to any given issue through the recognition of the effect gender has on the issue. The U.N. Economic and Social Council has defined this approach as "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels."[124]

Several international treaties signed by Seychelles, international human rights standards, and domestic laws oblige the country to pursue a gender-sensitive policy to reparations and transitional justice processes. For example, since May 1992, Seychelles has been a State Party to the U.N. Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"). Pursuant to CEDAW's provisions, States Parties must implement effective equality for women and allow their effective participation in transitional justice measures, including "reparations, memorialization, and institutional reform".[125]

Since 2011, Seychelles has also been a Member State of the Southern African Development Community's (SADC) Protocol on Gender and Development. Some of the relevant articles of the Protocol are the following:

- States Parties should encourage the implementation of gender responsive legislation, policies, programs and projects. (Article 3(a));
- States Parties shall put into place mechanisms for the social and psychological rehabilitation of perpetrators of gender-based violence. (Article 20(4));
- States Parties shall ensure that cases of gender-based violence are conducted in a gender sensitive environment. (Article 20(6));
- States Parties shall provide appropriate remedies in their legislation to any person whose rights and freedoms have been violated on the basis of gender. (Article 32(a)); and
- States parties shall ensure gender sensitive budgets and planning, including designating the necessary resources towards initiatives aimed at empowering women and girls. (Article 33(1)).[126]

The Commission was aware that proceeding with an approach that did not include a gender perspective could be dangerous to the transitional justice process. In that respect, it was aware that existing structural injustices often put women in positions of inequality that make them more vulnerable to human rights violations. "Transformative reparations" — a concept that has gained international legal consensus — requires reparations to not merely restore rights, but to provide redress that can achieve a balanced society with equal opportunity for all genders.[127]

The IACHR's approach in the 2009 Cotton Field case encompasses these standards and best practices. The Court ensured that the reparations it ordered for families of female victims murdered in Mexico "[we]re designed to identify and eliminate the factors that cause discrimination" and "[we]re adopted

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[124] ECOSOC Agreed Conclusions E/1997/2, U.N. Doc. A/52/3 (July 18, 1997), at para. 4.
[125] KELLI MUDDELL & SIBLEY HAWKINGS, GENDER AND TRANSITIONAL JUSTICE: A TRAINING MODULE SERIES 41 (Int'l Ctr. for Transit'l Just., 2018); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, arts. 14-5.
[126] Southern African Development Community (SADC) protocol on Gender and Development, Aug. 17, 2008, https://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf.
[127] Julissa Mantilla Falcón, *La importancia de la aplicación del enfoque de género al derecho: asumiendo nuevos retos*, 63 THEMIS REVISTA DE DERECHO 131, 131 (2013).

from a gender perspective, bearing in mind the different impact that violence has on men and on women".[128]

The Commission has implemented a similar vision to ensure that the reparations recommendation it makes to Seychellois victims are according to international human rights standards, and to ensure in that respect that women were equal participants in the design of its Reparations Policy. In that regard, the Commission's reparations focus group that guided the development of the Commission's reparations policy included a balance of genders. However, the Commission did not achieve the same gender balance on its TRNUC Victims Committee, with only two of the six members of the Committee being female. Nonetheless, it ensured that all its complainants were consulted on the Reparations Policy, giving an equitable voice to both male and female complainants.

6.4 Ethnicity, culture and non-monetary reparations

Ethnicity and culture are complementary considerations that the Commission considered important to take into account in the development of its reparations policies. Seychelles is a multicultural country composed of numerous ethnicities. This diversity created a creole identity, while preserving different groups distinguished by language, cultural practice, and religion. An identity-sensitive non-monetary reparation policy in Seychelles thus requires an understanding and acknowledgement of how these different communities are perceived and perceive redress for human rights violations committed.[129] It was through the creation of a diverse Reparations Focus group and a broad-based consultative approach with all victims that the Commission endeavoured to capture several perspectives within its Reparations Policy.

6.5 Religion and non-monetary reparations

Practice has shown that some of the most effective non-monetary reparations combine both "the sacred and the secular".[130] Religious studies expert note that "[r]econciliation finds a particularly strong justification in religious texts, traditions, and theologies and is espoused by religious actors disproportionately to secular actors".[131] The dynamic nature of religious actors has been acknowledged by many and particularly in situation of political turmoil it is important that religious people are "engaged, but not in a way that divides us, but in a constructive way" through which they can be "ambassadors of reconciliation".[132] This intersectional approach to reparations can manifest in numerous forms of non-monetary redress, including "performing rituals of reconciliation, building friendships and communities between members of hostile religious and communal groups, imparting moral vision to civil society leaders, healing victims of trauma and promoting forgiveness at the grassroots".[133]

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[128] Cotton Field Judgment, *supra*, at para. 451.
[129] JUAN A. CORTÉS GOMEZ, ENFOQUE DIFERENCIAL EN LA POLÍTICA DE ATENCIÓN INTEGRAL A LA POBLACIÓN DESPLAZADA, UNA LECTURA SOBRE LAS POLÍTICAS INTERCULTURALES 5 (Primer Encuentro Internacional "La Perspectiva de la Interculturalidad Reflexiones y Testimonios Desde América Latina, 2007).
[130] MUDDELL & HAWKINGS, *supra*, at 23.
[131] Daniel Philpott, *Religion, Reconciliation, and Transitional Justice: The State of the Field*, SOC. SCI. RES. COUNCIL 1, 4-5 (2007).
[132] Caleb Bedillion, *Sen. John Danforth '63 B.D. urges reconciling role for churches in broken political system*, YALE DIVINITY SCHOOL NEWS (Feb. 19, 2015), https://divinity.yale.edu/news/sen-john-danforth-63-bd-urges-reconciling-role-churches-broken-political-system.
[133] PHILPOTT, *supra*, at 26.

In Seychelles, more than three-fourths of the population are Catholic. Other religions observed on the island include Anglican Christianity, Hinduism, Bahai, and Islam.[134] Throughout its mandate, the Commission sought to engage with religious leaders in Seychelles, and entered into a Memorandum of Understanding with the Seychelles Interfaith Community (SIFCO) with a focus on reconciliation efforts. In addition, the Commission's efforts where fortified by the presence as a Commissioner of the Anglican Archbishop of Seychelles and the Indian Ocean, Archbishop James Wong, who worked with SIFCO throughout the Commission's mandate and highlighted and encouraged support for the TRNUC's mission of reconciliation and forgiveness of perpetrators.[135]

While the Commission did seek to benefit from the good offices of religious leaders, it was also aware that not all victims might feel uncomfortable with religion, and that it was important that any reparations efforts with religious connotations did not exclude victims from benefitting thereto on grounds of religious opposition.[136] Thus, it determined that any recommendation for religious ceremonies or other religious activities should be crafted to apply to only those victims that would find them beneficial, and that other non-secular recommendations should be made for other victims.

Ultimately, the Commission determined that including victims' perspectives and wishes in the process of forming reparation policies was necessary to create reparations that were satisfying and sustainable beyond the mandate of the Commission. The victim-centred approach adopted by the Commission is a critical element in its objective to heal the relationship between the State and victims and restore civil trust through the recognition of victims' suffering. The victim centred approach also took a holistic view of the victims' cultural, ethnic, and gender characteristics.

7. Consultations and Development of the Reparations Policy

As already indicated, the Commission worked with international pro bono consultations who conducted an extensive review of international practice and standards, which led to the development of a draft Reparations Policy, following upon best international practice. Notably, in terms of monetary compensation, the international consultants recommended that the Commission make a one-time monetary payment to each victim without discrimination of USD 2,000, and the rest of the policy recommendations concerned symbolic reparations or reparations specifically targeted to redress wrongs. For example, for a complainant that had been denied the right to education, the award of a scholarship was recommended.

While the Commission appreciated the logic, consistency with best international practice, and welcomed the simplicity of this approach to recommendations of monetary compensation, it was of the firm view that this approach would not be acceptable to its complainants and victims. In that respect, taking account of what victims had said before the Commission during the presentation of their complaints the Commission determined that it would have to identify for each specific human rights violation alleged an amount of monetary compensation to recommend. The obstacle for the Commission was identifying the reasoned basis it could rely upon to ascertain the quantum payable so that its recommendations were not arbitrary but underpinned by a rational basis.

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[134] Donald Lee Sparks, *Seychelles*, Encyclopedia Britannica (Nov. 2, 2020), https://www.britannica.com/topic/Commonwealth-association-of-states.

[135] Diocese of Port-Victoria, Seychelles: Pastoral Letter from Bishop Denis Wiehe for Lent 2020 (Feb. 26, 2020), https://www.nation.sc/articles/3616/diocse-de-port-victoria-seychelles--lettre-pastorale-de-mgr-denis-wiehe-pour-le-carme-2020.

[136] Ioana Cismas, *Religious actors and transitional justice: On legitimacy and accountability,* VOELKERRECHTSBLOG (May 13, 2015), https://voelkerrechtsblog.org/de/religious-actors-and-transitional-justice-on-legitimacy-and-accountability/.

From the outset of its consideration of the design of its Reparations Policy, the Commission determined that its victims had to be part of the decision-making process and that reparations recommended by the Commission would be based upon the expressed needs of its victims. As a matter of course, during the hearing of complaints, the Commission would ask the complainant what they would like to see the Commission recommend as an outcome in their case. While occasionally a complainant would request an apology, or the return of property taken, the overwhelming majority of complainants requested monetary compensation. Indeed, a number of complainants specified the amount of monetary compensation they were seeking and more often than not the sums were expressed in the millions. The Commission was mindful of the fact that in a small community such as Seychelles, and considering the resistance to the use of tax-payers money to pay reparations as set out above, as well as taking account of its broad objective to reconcile the people of Seychelles, its reparations recommendations not only needed to meet the needs of its victims, but they also needed to be understood and supported by the Seychelles community more generally.

As a means of engaging the Seychelles as a community, the Commission administered a national survey between 6 March and 10 May 2021, to complainants and non-complainants, the results of which provided insight into the forms of reparations complainants and community members perceived to be fair and adequate. At the same time, the Commission also administered a survey on the grant of amnesty given the specific provisions of its Act where the grant of amnesty to a perpetrator purported to bar a victim from seeking financial redress through civil court action.

Despite the widespread advertisement of its reparations survey, the TRNUC received a total of 66 responses — 36 from complainants and 30 from non-complainants. In accordance with its victim-centred approach, the opinion of the complainants was prioritised, even though the opinion of non-complainants, as members of the community who will participate in the reconciliation process, was also important in order for the Commission to understand broader community feeling on the Commission's potential recommendations on reparations.

From the results of the survey, it was apparent that apologies were the main non-monetary remedy preferred by survey participants. According to the survey, 65% of participating complainants would accept official public apologies from individual perpetrators, who should be physically present. If the perpetrators are administrative entities, high-ranking representatives should assume this responsibility. Another condition proposed for apologies is for them to be carried out before a panel comprising representatives of the Church, the Police, and the Army.

Regarding participating non-complainants, all of them recognised the importance of public apologies and 35% of them insisted they should be followed by financial compensation. Moreover, 66% of non-complainants agreed that all members of the community should respect the decisions of victims on this matter.

Other non-monetary reparations were mentioned throughout the survey. For example, 26% of the participating complainants would also accept commemorations and tributes made to victims, and 40% of non-complainants shared this view. One suggestion was that a permanent museum display should be set up. Additionally, 29% of the participating complainants suggested the return of property, compensation, and public displays of shame.

Forty-eight percent of participating non-complainants agreed that perpetrators should be required to undertake rehabilitation measures, whereas 40% did not find this was necessary. Given the substantial support for rehabilitation measures by the community and by the TRNUC Act, the implementation of restorative justice measures to be developed in consultation with the victims are included in the

Reparations Policy. These practices are widely applied in several countries and are considered effective alternatives to traditional criminal justice.

While the survey results are indicative of which forms of reparation might be fair and adequate for victims before the TRNUC, and they make clear that this includes non-monetary reparation, one of the most difficult issues faced by the Commission in that regard was the question of quantum. As such, the Commission undertook to conduct the below survey on the general amount of damages awarded by the courts of Seychelles for similar "violations" or offences.

8. Awards by Seychelles Courts

The fact that complainants engaging with the Commission were seeking economic redress was amply illustrated in the way they presented their complaints before the Commission and the violations they considered of most importance to them. For example, complainants who had been unlawfully imprisoned and forced into exile nevertheless focused their complaints on the impact those violations had on their property in Seychelles and on the fact that because of what had happened to them, they had lost their property and should be compensated for that and not the violations to their physical integrity as such. While perhaps in part explained by the long lapse of time since the occurrence of the events alleged, and thus perhaps since the more immediate suffering, this approach by complainants was indicative to the Commission of the fact that there is not a strong human rights culture in Seychelles. Complainants appeared to be under the impression that to be eligible for monetary compensation, they had to demonstrate an economic loss in the form of property before the Commission, as they would before a court.

Given this emphasis by complainants on monetary compensation, the Commission used the services of a pro bono international lawyer, Daniel Wand, to carry out research for the Commission on the awards that had been made by Seychelles courts for violations of human rights set out in its Act, or offences that can be said to be similar to those violations. The findings of that study in relation to specific human rights violations or corresponding criminal offences are set out in the following sections.

Murder: The study identified a number of cases where the Seychelles' courts have had to make awards of compensation in respect of individuals that have died at the hands of the state.

In calculating the total compensation to be paid, the courts have made awards in respect of: the pain and suffering experienced by the individual prior to his or her death (which is paid to the deceased's heir); the emotional pain and suffering that was experienced by friends and family members of the individual as a result of his or her death; the financial contribution that the deceased made to a household income (which is to be paid to the person or persons who received the contribution, for example, a spouse or the deceased's mother and father); and special damages such as funeral expenses or the cost of medical treatment that was given prior to the deceased's passing.

In determining the appropriate amount of compensation in respect of the pain and suffering that would have been experienced by the deceased prior to his death, the court has been concerned to understand how the deceased died, how long it took them to die after the incident that precipitated the death, such as a gunshot wound, and the circumstances in which the deceased died. Where the deceased would have suffered a substantial amount of pain and suffering before they passed way, such as because they were subjected to torture prior to death, or because there was a significant period of time between, for example, the gunshot and their death, or because they were subjected to invasive medical treatment in an attempt to save their life before they passed away, the award of damages would be higher. If the death was instant a nominal award in respect of pain and suffering is the approach adopted by the Seychelles' courts.

In quantifying the emotional pain and suffering experienced by family and friends, courts have considered the proximity of the relationship between the family member or friend and the deceased, and whether the family member or friend had seen the deceased person before they died. If they had seen the person before they died and had therefore experienced the death more directly and personally, the award of damages was increased. It is also the case that parents and spouses received a higher award in respect of pain and suffering than did friends or siblings.

In respect of compensation for the loss of the financial contribution that the deceased made to a household income, this has been calculated based on the contribution that the deceased was making at the time of his death and the length of time for which that contribution could be expected to continue. For example, in *Rose v Government of the Seychelles* (2011), the Supreme Court, whose Judgment was upheld by the Constitutional Court, decided to award the deceased's partner the sum of SR 1,500 per month in respect of "economic loss and also maintenance" for a period of five years on the basis that was the deceased's contribution to the household and that is was expected that within five years the deceased's spouse would have found another partner and, therefore, she would not need to be maintained. The son of deceased was awarded SR 2,500 per month for ten years on the basis that was how much he required to be maintained and because after ten years he could support himself.

The range of awards made by the court in respect of each element of compensation are as follows:

For the pain and suffering of the deceased: Rs50,000 – Rs300,000
For the pain and suffering of the deceased's parents: Rs10,000 – Rs50,000
For the pain and suffering of the deceased's partner: Rs70,000 – Rs100,000
For the pain and suffering of the deceased's siblings: Rs2,000 – Rs80,000
For the pain and suffering of the deceased's children: Rs25.000
For economic loss: Rs30,000 – Rs250,000

Where an individual has died following an unlawful arrest and subsequent detention, and after being tortured and assaulted, the court has been willing to also order damages to be paid for the unlawful arrest and detention, and the assault, in addition to the damages for the pain and suffering experienced as a result of an impending death. The courts' approach to assessing damages for unlawful and arrest and detention, and for assault and torture are considered further below.

Enforced Disappearance: The study was unable to identify any cases that concerned disappeared persons and therefore there are no damages awards to guide the Commission in making compensation awards in such cases.

Unlawful Arrest and Detention: There are a number of cases where the Seychelles' courts have had to make awards of compensation in respect of the unlawful arrest and detention of individual by the agents of the state, including members of the armed forces and the police.

In calculating the total compensation to be paid, the courts have made awards in respect of: the loss of liberty experienced by the individual; and the stress, fear, humiliation, and inconvenience experienced as a result of the arrest and incarceration.

The courts have declined to assess the compensation for unlawful arrest and detention on the basis of an "hourly rate". However, the length of the unlawful detention will be relevant in determining the appropriate damages award. The treatment experienced by the individual whilst unlawfully detained will also be a relevant factor in determining the award amount.

The awards made by the court for the violation of an individual's right to freedom by way of an unlawful arrest and detention are as follows:

Rs5,000 (18 hours – 1998)
Rs15,000 (11 days – 2000)
Rs20,000 (2 days and 9 hours – 2001 – but it was assessed with moral damages)
Rs10,000 (7 days – 2001)
Rs15,000 (1 hour – 2011)
Rs25,000 (2 days and 12 hours – 2007)
Rs20,000 (4 days – 2007)
Rs25,000 (39 hours – 2010)
Rs10,000 (12 hours – 2010)
Rs90,000 (15 hours – 2011 – the victim was killed after the unlawful detention)
Rs30,000 (7 days – 2012)
Rs30,000 (24 hours – 2016)

It is to be noted that there is, evidently, some inconsistency in the value of the awards that are made. This is no doubt partly the result of a lack of authorities to guide the court but also because there is no formula for determining the appropriate award; it is, to some extent, rather arbitrary. The difference in the value of the awards will also however reflect the conditions in which the individual was held and their treatment during detention.

The awards made by the court for moral damages (fear, stress, and anxiety etc.) occasioned by unlawful arrest and detention are as follows:

Rs10,000 (1998)
Rs10,000 (2000)
Rs20,000 (2001 – but it was assessed together with damages for unlawful detention)
Rs15,000 (2007 – but "inconvenience" was assessed together with detention)
Rs15,000 (2011)
Rs20,000 (2012)
Rs65,000 (2016 – but that also takes into account moral damages for assault)

Thus, there is a relative consistency in the awards for moral damages in respect of unlawful arrest and detention. In addition to making awards of compensation for loss of liberty and moral damages for an unlawful arrest and detention, the courts have also awarded compensation under a separate head where an individual has been subject to an assault or torture whilst detained. Awards in respect of such acts are considered below.

Assault and Torture: There are a number of cases where the Seychelles' courts have had to make awards of compensation in respect of assault and torture perpetrated against civilians by agents of the state including police and armed forces personnel.

In calculating the total compensation to be paid, the courts have made awards in respect of:

Pain and suffering as a direct result of the injuries sustained in the assault; Moral damages (stress, anxiety, humiliation etc.) arising from the assault; Loss of convenience; and Special damages for medical treatment.

The courts have not always adopted a clear approach and have, on occasions, made global compensation awards in respect of the assault rather than identifying exactly how the award is constituted in terms of the different elements of damage.

In considering the appropriate award to make in respect of pain and suffering arising as a direct result of the injuries suffered from the assault, the approach by the courts has been to establish: the particular

injuries that occurred, the seriousness of the injury or injuries, the treatment that was required, whether rehabilitation was necessary, and also the length of the period over which recuperation took place. In assessing the extent of the injuries for the purpose of determining the appropriate award of compensation to make, the courts would have had the benefit of expert medical evidence.

Obviously, individual awards made by the courts for pain and suffering are very fact specific and turns upon the exact nature of the injuries sustained, and a broad of range of awards have been made, the lowest being Rs10,000 and the highest being Rs80,000. In some cases the court has also made a separate award in respect of moral damage:

Rs10,000 (victim beaten on his feet – 1998)
Rs10,000 ("emotional distress" as moral damage)
Rs30,000 (victim beaten with pipe causing bruising and lacerations to body – 2001)
Rs15,000 ("emotional distress" as moral damage)
Rs5,000 (victim dragged from car and slapped in face and chest – 2001)
Rs40,000 (victim whipped on feet, punched and kicked, beaten with a hose pipe, he was unable to walk properly for six weeks – 2003)
Rs8,000 (victim slapped to the face causing slight injury to right eye – 2003)
Rs2,000 ("humiliation, stress and distress" as moral damage)
Rs25,000 (victim punched and kicked, hit was hose pipe and tear gassed – 2005)
Rs80,000 (victim kicked and punched, life threatened, head hit against container, his penis was cut and became infected but there was no permanent damage – 2006)
Rs60,000 ("anxiety, stress, embarrassment, anguish and distress")
Rs12,000 (victim with hit with iron bar on his arm necessitating 17 stitches with residual scarring – 2007)
Rs5,000 ("pain and suffering" as moral damage)
Rs3,000 (for trespass to the person)
Rs30,000 (victim sustained a gunshot wound – 2007)
Rs70,000 (victim punched and kicked in the head during a political rally causing a wound which required five stitches – 2009)
Rs40,000 (victim struck to the head which caused a haematoma during a political rally – 2009)
Rs40,000 (victim sustained a truncheon blow to the left elbow during a political rally – 2009)
Rs75,000 (victim sustained punches and kicks to the head during a political rally which necessitated 21 stitches – 2009)
Rs35,000 (victim assaulted with tear gas and struck with three rubber bullets during a political rally – 2009)
Rs55,000 (victim kicked and hit with truncheons to the head which resulted in a haematoma – 2009)
Rs55,000 (victim deliberately struck with a vehicle – 2009)
Rs20,000 (assault causing wound to the victim's ear which requires stitches – 2010)
Rs10,000 ("stress, humiliation and mental anguish" as moral damages)
Rs20,000 (victim was punched to the head and body, her shoulder was dislocated and she required three months of physiotherapy – 2010)
Rs10,000 ("pain and distress" as moral damage)
Rs10,000 (victim kicked to the abdomen and struck on the sole of his foot – 2011)
Rs5,000 (as moral damages)
Rs50,000 (victim was punched, kicked and hit with an axe which caused lacerations to the victim's scalp – 2011)

Rs30,000 (victim was beaten with a pipe including to his feet which necessitated a skin graft and 6 weeks in hospital was described by the judge as a gross violation of the victim's human rights and degradation at the hands of the state – 2012)
Rs20,000 ("depression, stress, humiliation and fear" as moral damage)
Rs20,000 (victim suffered permanent disfigurement to her finger – 2016)
It can be deduced from the established case law that the factors to be considered when determining an award for assault or torture include the following:

- the nature of the violence that was perpetrated;
- the use of any weapons;
- the type of injuries that were caused;
- whether there was any permanent disfigurement;
- whether medical treatment was required and, if so, the extent of that treatment and any necessary stay in hospital

The courts have also been prepared to make awards of exemplary damages where the acts of torture or assault were perpetrated by agents of the State. However, in Ramkalawan and Others v Government of the Seychelles (2009), the court simply enhanced the compensation awards that it made to take account of the facts that the perpetrators of the various assaults were agents of the State rather than make a separate award in respect of exemplary damages.

Loss of Property / Businesses: The loss of property or businesses as a result of appropriation or forced acquisition by the state have been considered by the Seychelles courts, but each case turns on its own very particular facts, such as the size and nature of the land or business that was appropriated. The guiding case law is that of Moulinie v Seychelles and Ors [2016], where the court stated that damages in respect of claims concerning land should be assessed based on the "fair market value for the land at the time of the claim".

Unlawful Dismissal from Employment: According to the case law under the Seychelles Employment Act 1995, if a dismissal is unlawful, the court will award the person's salary between the time of dismissal and the court's judgment as compensation. In Chang-Time v Four Seasons Resort (2019), the Court held that it did not matter that the individual had found work in the intervening period and that the compensation award would not be reduced to take account of that fact.

Denial of Employment: No previous cases were identified dealing with the denial of employment.

Exile: Only one case was identified where an individual had fled the country and had not returned due to his fear of being assaulted again (Ramkalawan and others v Government of the Seychelles (2009), Plaintiff 11). However, the court did not expressly consider what the damages award for being forced to flee the country was and it just made an award based upon all of the facts of his case.

Denial of Education (corresponding to the claim of abuse of office or "other acts" under the TRNUC Act): No cases in which the courts had made an award of damages in respect of a person being denied education were identified.

As is clear from the above study, there is significant conservatism on the part of the Seychelles court in the awards that were made to victims of human rights violations. Notably, the former Chief Justice of the Seychelles Supreme Court, Dr. Mathilda Twomey expressed her view before the Commission, when appearing as a general witness, that the development of a human rights culture in Seychelles had been

hindered by the low awards of compensation made by the courts for human rights violations.[137] There was no incentive for Government authorities to reform their behaviour because the awards made against them were largely inconsequential.[138] While not said by the former Chief Justice, the Commission considers that the low awards by the Courts are also reflective of their "loyalty" to the Government cultivated during the one-party State and remaining for many years thereafter. It is only very recently that it appears that the Court may take a different view going forward. In August 2021, for instance, the Seychelles Court of Appeals ordered the Seychelles Government to pay Alain St Ange, a political candidate who allegedly sustained damages in relation to work-related claims, the sum of SR 6,984,634.50 with interests after the Court of Appeal dismissed the Attorney-General's appeal but allowed that of the former tourism minister. The costs are in respect of hotel, travel, and incident expenses for SR 3,098,065.90; in respect of loss of earnings for SR 2,886,568.60; and in respect of moral damages for SR 1,000,000. This award of SR 1,000,000 in moral damages for the Government's withdrawal of their nomination of Mr. St. Ange for a United Nations elected position in many ways was considered a benchmark for its complainants as discussed further below. The Commission considers that an embarrassing career setback – a moment in one's life that can be pivotal, inconsequential, or both – warranted SR 1,000,000, then surely a life taken, or a political persecution, warrants much more.

9. Other Awards of Compensation

Other matters that the Commission considered in the development of its Reparations Policy were awards of compensation that had been made to Seychellois by Government authorities in cases that had not gone to court. For example, with respect to the pollution of the water at La Misere, each household was paid SR 250,000, which was then followed by payments for each individual affected in the sums of SR 50,000 for every member of an affected household over 7 years of age; SR 15,000 for each child under 7 years; SR 25,000 for each student and teacher from affected schools and the Ministry of Tourism.

The Commission also sought to obtain information concerning compensation payments for the health impact on staff members of fungus at the National Archives from the Attorney General's Office, but no information was forthcoming to the Commission.[139]

In addition, the Commission became aware of individual compensation payments that appeared to have been made at the discretion of the President to the family members of Berard Jeannie, a police officer killed during the implementation of the Coup d'état of 1977, of some SR 5 million, and the allocation of a piece of land and building of a house for complainants in Case No. 016: Brian Victor and Case No. 001: Dorothy Chang Him et al, an undertaking given under the previous Presidency of Danny Faure that was not continued by the new administration.

The Commission also examined more broadly compensation decisions made by Government and in particular the 2016 announcement by James Michel, prior to election, which announced that a payment of a gratuity of SR 8,000 would be made to 808 former members of the Seychelles People's Defence Forces (SDPF) and in certain cases their heirs – who left the SPDF before 2007 and to 150 who were at the time in service, and that this would be followed by payment of compensation which was

[137] Hearing 185, Wednesday, July 28 2021 Dr. Mathilda Twomey
[138] *Id.*
[139] See Report of the Committee's Investigations of Staff Complaints at the National Cultural Centre, August 2017. The Committee was mandated to investigate the complaint of staff affected by fungus in their work place and the merit of their claim for compensation. Finding merit to the claim the Committee referred the question of quantum to the Attorney General.

calculated by reference to their years of service. This exercise cost the Government some SR 20,000,000.[140]

While the Commission derived some basis from the research set out above into compensation awards in light of the Chief Justice's observations in relation to court awards, it ultimately considered that reliance on awards by Seychelles Courts would be antithetical to the objective of the Commission to fully recognise the truths of the suffering that occurred with an eye to reconciliation, and to ensure that human rights violations did not recur. In that regard, the Commission was also very aware of the generational impacts of the human rights violations alleged, bearing in mind that patterns of discrimination and economic exclusion had guided Government decision-making since the Coup d'état of 1977 until the loss by the SPUP/SPPF/PL/US party of legislative and executive power in October 2020. As discussed further below, the Commission's determination of quantum to recommend was ultimately derived from consultations with victims on its draft Reparations Policy.

10. The Draft Reparations Policy

Following the conduct of extensive research and consultation with international experts[141], the Draft Reparations Policy was prepared by the Commission. The Reparations Policy was grounded in the statutory framework of the Commission as a complaint-driven process with a focus on providing redress to the victim as an individual, while also recognising the benefit to the broader community of collective reparations. The Reparations Policy's central objective was to make recommendations for reparations in consultation with victims that would result in sustainable redress, and its preamble set out in broad terms the contextual findings of the Commission and the broad nature of the reparational redress the Commission was seeking to recommend. The Reparations Policy preamble underscored that the policy was based on the United Nations Basic Principles of Reparations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Law Commission's Draft Articles on the Responsibility of States.

The Commission felt it important to also underscore in the preamble of the policy fundamental truths that had been established through the complaints it had heard, which showed the long temporal reach of the human rights violations connected to the Coup d'état of 1977. Accordingly, the preamble of the Reparations Policy underscored the strategy used by the Government that had seized power through the Coup d'état of 1977 of creating a "with us or against us" culture, which extended way beyond the period of the one-party State of the Second Republic and was central not only to that Government's perpetration of human rights violations but also its ability to retain power through a system of favour, patronage, and fear. The widespread nature of the human rights violations perpetrated as a means to retain power were also recognised in the preamble of the Reparations Policy, which underscored that this systematic culture of discrimination introduced by the Coup-installed Government fundamentally denied individuals perceived as against the regime of their rights to economic prosperity through unlawful acquisitions of their land and property, denial of the right to benefit from government-controlled education, denial of employment, denial of land allocation, and influenced their access to health care and prevented them from living free from other acts of abuse of Government power subjecting them to lives lived in fear. The Reparations Policy preamble further underscored the generational impact of the human rights violations perpetrated against its victims.

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[140] See State of the Nation Address by President James Alix Michel, 16 February 2016.

[141] The Commission is grateful to Amnesty International, The International Centre for Transitional Justice, Redress and specialist consultants Luke Moffett and Carla Ferstman for their helpful contributions to the draft policy.

The Reparations Policy preamble further reaffirmed that victims of human rights violations have an inalienable right to fair and adequate reparation and rehabilitation, especially in a context where provision is made for amnesty and where human rights violations have had long-lasting, generational impacts, both of which are true in Seychelles. The Reparations Policy preamble also made specific reference to land, given the economic importance of land to complainants coupled with the particular generational impacts caused by the policy of lands acquisitions pursuant to the Land Acquisition Act of 1977, or forced sales under the threat of acquisition during the Second Republic. The Commission was particularly concerned that despite Schedule 7, Part III of the 1993 Constitution, granting a constitutional right to have a land acquisition reviewed and land returned or adequate compensation paid, the Government did not always discharge that obligation with good faith, and denied many victims the remedies promised by the Constitutional provisions. The Reparations Policy's preamble further underscored that all those persons who had their land acquired by means of forced sales during the Second Republic were denied the rights of any review of that acquisition under the 1993 Constitutional provisions based on the fiction that land sold to Government during the Second Republic was a transaction between a willing seller and willing buyer. Therefore, the preamble recognises that reparations were needed in this context in particular.

The Reparations Policy preamble also emphasised that the need to grant reparation to victims was one of urgency, and that such grants of reparation would contribute to the building of a new and just moral order, as the payment of reparations to victims was a necessary step to entrenching respect for human rights in the culture of Seychelles and ensuring the non-recurrence of such violations, another of the mandated objectives of the Commission.

In terms of ensuring that funds were available to implement reparations measures, the Commission had long proposed the establishment of a Trust Fund for Victims, whose structure and operations as set out in its Reparations Policy are detailed below. As already indicated, given the severe resource constraints of the Commission, the Commission decided that its Policy would be applied by a successor body, whose structure, make-up, and governance were also detailed in the Reparations Policy as set out below. The Reparations Policy thus recommends the establishment of a successor body to the Commission, made up of three current members of the Commission,[142] to provide detailed recommendations to the President as to which reparations should be awarded to each respective complainant, applying this Policy based on the determinations made by the TRNUC for each case. Once the Commission's successor body provides the President with its recommendations, the Government of Seychelles will be responsible for implementing them. The Commission considered it of paramount importance that the successor body derive from the membership of the original Commission for reasons of efficiency, given their familiarity with the complaints made before the Commission but also as a matter of integrity of the decision-making process. In that respect, the Commission wished to guard against second guessing or undermining of the decisions that it had made concerning the violations that warranted reparations.

The Reparations Policy provided a definition of terms derived from the definitions provided in the TRNUC Act, but more specifically expanded upon by reference to international standards and the extensive research that had been carried out the by the Commission as identified above. In that respect, while under Section 2(4) of the TRNUC Act, reparations made to a victim can include any form of compensation, facility, or, concession,[143] international legal standards provided a more broad-based understanding of what form(s) reparations can include, namely:

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[142] In particular, this will include current Vice-Chairperson Michael Green, Commissioner Archbishop Wong, and Commissioner Jacques Koui Gbilimou, who have expressed their agreement to serve on the successor body; the Commission thus hereby recommends their appointment thereto.
[143] TRNUC Act, Sec. 2(4).

i. satisfaction;
ii. restitution;
iii. rehabilitation;
iv. guarantees of non-repetition; or
v. compensation.

The Commission provided in its definition section of the Reparations Policy an explanation of the responsibility of the State. As already identified above, the concept of State responsibility for human rights violations was not well understood in Seychelles, with its admittedly weak human rights culture. The Reparations Policy thus emphasised that the foundational layer of "reparation", to achieve reconciliation within a State, is endorsement of the legal right of victims to petition the State for reparations;[144] trust in the State to stop, repress, and redress violations; and to take accountability for violations against both individuals and communities. It also underscored that there is widespread international recognition of the principle that it is the responsibility of the State to provide justice for victims of human rights violations, and that sustainable justice requires (1) judicial accountability, (2) truth, and (3) reparations. Further, this responsibility of States to combat impunity is a matter of justice for the victims, a deterrent with respect to future human rights violations, and a duty to uphold the rule of law and public trust in the justice system.

Other terms of the Policy that the Commission determined needed definitional explanation were "State capacity", meaning the government's ability to accomplish its intended policy goals, and the term "victim", whose definition was derived from Section 2(7) of the TRNUC Act.[145] To complement and define further this definition of victim, the Commission turned to international human rights law to define a victim as a person who individually or collectively suffered harm, including physical or mental injury; emotional suffering; economic loss; or substantial impairment of their fundamental rights as a result of acts or omissions that constitute violations of international human rights law. The Commission further underscored that a victim can be an immediate family member of the direct victim, especially in cases of murder (unlawful killing) or enforced disappearance, or a person who suffered harm in intervening to assist victims in distress or to prevent victimisation.

The Reparations Policy also set out a number of guiding principles and standards to guide the work of its successor body. It noted that the successor could recommend the following types of reparations: i) satisfaction, or the pursuit and acceptance of truth, but also of responsibility and fault; ii) restitution, or the restoration of the victim to the original situation before the gross violation(s) of international human rights law occurred; iii) rehabilitation, or the restoration of the victim's full physical and mental rehabilitation as well as reputation through the provision of medical and psychological care after a human rights violation has occurred; iv) guarantees of non-repetition, or measures that safeguard against the repetition of previously violated human rights; and v) compensation, or monetary awards to financially compensate for losses incurred, acknowledge violations and, in the eyes of many in the community, serve as a lesson to the Government of Seychelles as to the consequences of committing human rights violations. The UN Basic Principles classify the jurisprudence and practice of "guarantees of non-repetition" as encompassing, inter alia, orders for States to investigate, identify, and prosecute perpetrators of the violation(s);[146] interventions such as maintaining civilian authority over military and security forces; strengthening the independence of the courts; protecting legal, medical, media and related staff, and human rights defenders; promoting international human rights standards in public

[144] *See* ICCPR, art. 2(3).
[145] TRNUC Act, sec. 2(7) (a victim is "[...] a person who has suffered any harm or detriment as a result of any violation").
[146] The Commission notes that this is true in the present context so long as they have not received an amnesty from the Commission.

service; promoting mechanisms for preventing and monitoring social conflicts and their resolution; human rights training programs for various types of state officials, and throughout the education system; and directives to improve the conditions of prison systems and detention practices.

In recommending the above forms of reparations, the Commission considered it imperative that its successor body take into account the following principles:

i) **Non-discrimination**, or treating every individual equally, regardless of their ethnicity, nationality, gender, religion, race or any other form of identity or social construct;

ii) **Fairness**, or providing consistent forms of reparation to similarly-situated victims and for similar violations;[147]

iii) **Equitable distribution of resources**, or providing reparations that are reasonably and adequately proportionate to the gravity of the harm that the violation caused;

iv) **Sustainability and Feasibility**, or providing reparations within the limits of state capacity and available resources;[148]

v) **Do No Harm,** or duly considering risks of unintended consequences, and actively seeking to avoid foreseeable harm to individuals or communities from the reparation provided;

vi) **Promote healing and advance social cohesion**, and provide reparations that promote reconciliation, while considering social norms and practices specific to the context of Seychelles;

vii) **Reinforce state morality, ethics and trust**, through educational programs and providing reparations, with the goal of reinforcing acceptable norms of state conduct and morality and promoting constructive consultation and debate where they may conflict with traditional norms and practices.

The Reparations Policy underscores that in recommending reparations, the Commission successor body, shall further take into account the following standards:

i) Reparations should be **tailored to victims** of human rights violations;

ii) **Monetary and non-monetary reparations** should be considered as complementary measures. The Commission should consider avoiding ordering monetary reparations exclusively for any given case, as complementary non-monetary reparations might **better satisfy victims' long-term needs;**

iii) **Appropriate non-monetary reparations,** referenced in Section 3(7)(e) of the TRNUC Act, should include restitution, rehabilitation, satisfaction and the guarantees of non-repetition as defined in this Policy;

iv) **Individual measures** should be, where appropriate and effective, **accompanied by communal reparations** to recognise the collective suffering of victims;

v) **Consultation** with victims on the design and implementation of reparations measures is mandatory and should involve active participation and consultation of gender, ethnic,

[147] Transparent standards and procedures should be established to ensure such equal treatment.
[148] Reparations should be inclusive, far-reaching and long-lasting; however, they should be administered taking into consideration the realistic capacity of the State to both fulfil its responsibilities and uphold its international obligations.

cultural and religious groups; vi) Reparations should be designed and implemented with a view to achieving transformative reparations, to **correct persisting structural inequalities**.

The Policy Framework of the Reparations Policy outlined the measures that should be regulated in order to effectively address and provide reparation for the primary categories of violations before the TRNUC, if carried out during or in relation to the 1977 Coup, and the categories of harm, which are potentially overlapping and caused by the below violations.

Pursuant to Section 2(8) of the TRNUC Act, the following violations are specified:

a) Unlawful killing;
b) Unlawful imprisonment or other deprivation of physical liberty;
c) Torture;
d) Rape;
e) Enforced disappearance of persons;
f) Kidnapping;
g) Forceful eviction from legally-owned building or land (e.g. physical force; intimidation);
h) Unjustified acquisition or loss of property or business (e.g. through corruption);
i) Wrongful denial of the right to employment (e.g. blacklisted from government-run institutions due to political affiliation);
j) Wrongful termination of employment;
k) Forced exile;
l) Abuse of office by a Government official, including the executive, judiciary, or legislature (e.g. through corrupt practices); and
m) Other acts of a similar character causing suffering or injury to body, or to mental or physical health.[149]

The Reparations Policy identifies the following categories of harm deriving from the above violations:

1. Emotional pain and suffering;
2. Physical pain and suffering;
3. Loss of life;
4. Material or financial loss;
5. Identity-based harm;
6. Symbolic harm; and
7. Educational harm.

The Reparations Policy makes it clear that the identified categories of harm, and corresponding reparation measures, are not intended to be viewed in isolation or as exhaustive. In that respect, the Commission has undertaken to set out the Reparations Policy's guidance for its successor body when recommending similar reparations to similarly-situated victims, that successor body should nevertheless be continuously apprised of each individual victim's preferences and, where fair and reasonable, make recommendations informed by such.

In addition to the above, the Commission also recommended that the Government of Seychelles issue a general apology to all victims of human rights violations which can be attributed to the State. This, however, should not imply that the Government is exempt from also making case-specific apologies, if and when determined it should do so, in accordance with this Policy.

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[149] *See* TRNUC Act, sec. 2(8).

In terms of the implementation of the Reparations Policy, the Commission set out in the Policy that the reparations options would be applied by its successor body to the case determinations of the Commission in consultation with the victims. The Reparations Policy underscored the right of victims to be heard on reparations. Following the model of the TRNUC, the Commission recommended that its successor body should be independent from the Government of Seychelles. It should further be established by a legislative act and monitored by the National Assembly to ensure that it has the requisite authority to make recommendations, and that the Government adequately implements any recommendations made in an expeditious manner.

As already indicated above, the Commission has long advocated for the Government's establishment of a Trust Fund for Victims ("TFV") to achieve the Commission's objective to provide "appropriate remedies or reparations". The Commission's Reparations Policy thus sets out the Commission's vision of the TFV and proposed an enacting statute in Annex A of the Reparations Policy. The Commission considered that the TFV should be managed by a Board, independent of Government, who should serve to monitor the recommendations made and implement the successor body's reparation awards by distributing funds as identified and provided by the Seychelles Government.

11. Monetary Reparation Structure

One of the most difficult aspects for the Commission was determining the quantum of payments for monetary compensation. While the Commission's research into previous compensation awards by courts, coupled with other awards of compensation made by the Executive branch of Government, provided the Commission with some guidelines, given the significance of monetary compensation to its complainants, the Commission determined it imperative to allow a victim-centred approach to its determination of the quantum to be awarded. While the Commission was mindful that the proposals of victims may have been considered arbitrary and dismissed on that basis, the Commission sought to ensure that the proposals were reasoned and, in principle, feasible for the Government to undertake to implement them.

To focus on the issue of quantum, the Witness Support Officer identified a number of victims spanning the scope of human rights violations alleged, and the Commission organised a focus group meeting with these victims on its Draft Reparations Policy to begin to ascertain what victims expected in terms of monetary compensation. The first meeting of the Commission with the Reparations Focus Group took place on 22 February 2022. At that meeting, victims broke into small groups to discuss the violations and the recommended awards they felt would fairly reflect the harm that was done.

Among these discussions, a few court cases were notable. First, the Commission recalls that consideration in this respect was given to the Seychelles Appeals Court award to Mr. St. Ange of SR 1 million in moral damages for the humiliation and stress suffered from the revocation of a nomination for a United Nations elected position by the Government. This case very much presented itself as a benchmark. If the hurt feelings and career set-back of a person, a moment in their life, warranted moral damages of SR 1 million, then surely, the victims considered, life-changing or -ending human rights violations warranted a significant amount more. During the victim consultations, the highest monetary award proposed was SR 20 million for the death or disappearance of a person, followed by awards of SR 10 million for forced exile and SR 5 million for torture, to a minimum of SR 1 million for wrongful denial of employment and wrongful termination of employment. The Focus Group also proposed a monthly payment of a Reparations Allowance for certain violations of SR 15,000.

Following this first meeting, the Commissioners discussed the proposals that had been made in terms of considering their feasibility for Government, and made a number of reductions and amendments to what had been proposed by the victims focus group. For example, the Commission capped the maximum amount of compensation payable to SR 20 million regardless of the number of violations suffered, and reduced some of the maximum sums proposed by the focus group. Given that the Commission had made substantive changes to the Reparations Policy, it reconvened the focus group on 5 April 2022, and discussed and debated the amendments until the draft policy was agreed to by the Reparations Focus group. It was determined at that meeting that the policy would be circulated by the Commission to as many of its complainants as possible under the cover of an invitation to attend a Victims' Plenary Meeting on 27 April 2022, to discuss the draft policy and seek feedback from the Commission's complainants with the aim of coming to broad agreement among all complainants. It was also agreed at that meeting that the Victims' Plenary Meeting should be victim-led, and representatives from the focus group were selected to form an official sub-committee pursuant to Section 8(2)(f) of the TRNUC Act. The members of the Committee were civil society leader Barry Laine as Chairperson, Mr. Regis Francourt as Vice-Chair, Mrs. Juliana Betsy as Secretary, Mr. Lewis Betsy as Co- Secretary, Mrs. Livette Hermitte as Member, and Mr. Bernard Sullivan as Member. The TRNUC Victims Committee worked with Commissioner Koui and the Commission Victims Support Officer to organise the logistics of the meeting and its agenda.

The Victims' Plenary Meeting was attended by 100 of the Commission's complainants and was televised to the public and live-streamed for those not in physical attendance. There were presentations by Gabrielle McIntyre, the Chairperson of the Commission, explaining the basics of the Reparations Policy and its basis in broader international law, and by the Vice-Chair, Michael Green, on the sufferings the policy sought to address in the context of Seychelles. The TRNUC Victims Committee presented the following scale of payments to the participants and general public:

	Violation	**Corresponding one-time payment amount**	**Reparations Allowance**
1	Unlawful killing/murder	SCR 20 million	Yes, for the dependents of the victim. For children of the victim, this will only apply until the child is 18 years of age. For adult dependents, this will only apply if the dependent has reached the pensionable age and is only receiving a social security pension. The Reparations Allowance will be capped at SCR 20 million.

2	Enforced disappearance of persons	SCR 20 million	Yes, for the dependents of the victim. For children of the victim, this will only apply until the child is 18 years of age. For adult dependents, this will only apply if the dependent has reached the pensionable age and is only receiving a social security pension. The Reparations Allowance will be capped at SCR 20 million.
3	Forced exile	SCR 10 million	Yes, if the victim lives in Seychelles
4	Torture	SCR 5 million	Yes, if the victim is permanently disabled. The Reparations Allowance will be capped at SCR 20 million
5	Gender and sexual based violence, including rape	SCR 5 million	No
6	Kidnapping	SCR 5 million	No
7	Abuse of office by a Government official, including the executive, judiciary, or legislature	SCR 2 million	No
8	Wrongful denial of the right to employment	SCR 2 million	Yes, if the victim has reached the pensionable age, and only receives a social security pension. The Reparations Allowance will be capped at SCR 20 million.

9	Wrongful termination of employment	SCR 2 million	Yes, if the victim has reached the pensionable age, and only receives a social security pension. The Reparations Allowance will be capped at SCR 20 million.
10	Unjustified acquisition or loss of property or business Note: Victims benefitting from the Government's return of undeveloped return of land scheme will only qualify for the recommended reparation amount of SCR 1 million and loss of income.	SCR 1 million + Current market value of the property or business + loss of income	No
11	Forceful eviction from legally-owned building or land Note: Victims benefitting from the Government's undeveloped return of land scheme will only qualify for the recommended reparation amount of SCR 1 million.	SCR 1 million + Current market value of the property	No
12	Unlawful detention or other deprivation of physical liberty	SCR 1 million + SCR 2,000 per day of detention	No
13	Harassment	SCR 1 million	No
14	Other acts of a similar character causing suffering or injury to body, or to mental or physical health	SCR 1 million	No

While the victims meeting led to broad agreement on the terms of the policy and the approach taken towards the range of reparations among complainants, a number of areas of disagreement also surfaced. For example, in terms of the one-time payment of compensation for a violation, complainants

considered that it would not be fair where there was more than one victim of the same violation for the same lump-sum payment to be made. The specific example was given of forced exile, where the one-time compensation payment was identified as SR 10 million. Complainants felt that it would be unfair for the same amount to be paid to a single person that went into exile and a family of four or more people. In that respect, the victims considered that payments should be tailored to not only the severity of the violation but also to the number of victims. There were also concerns expressed that the Draft Reparations Policy paid insignificant attention to land issues and to ensuring that acquisition of land or sales under duress were properly compensated. Concerns were also expressed about the fairness of the Government policy on the return of undeveloped land, which did not provide compensation for lands that could not returned and also required applicants under that scheme to return any compensation that had previously been paid by Government. In addition, victims expressed their dissatisfaction that participation in the return of undeveloped land scheme prohibited the continuance of their case before the TRNUC.

Further, there was significant debate about the use of tax-payers money to pay reparations and proposals for how money may be raised by Government. It was also proposed that the reparations payable be recorded in the Government accounts as a debt that would bind the Government thereafter. There was also concern with respect to political will to pay reparations, and a clear commitment on the part of victims to organise themselves and demand that payment be made also surfaced during the meeting.

Importantly, all the victims present endorsed the TRNUC Victim's Committee as the body to represent the victims going forward towards securing the payment of reparations from Government.

The Victims' Plenary Meeting invariably sparked huge debate in the broader Seychelles community, and the focus again was on the use of taxpayer money, but also feasibility of the Government meeting the sums being proposed by the victims. Social media was awash with criticism of the victims and the Governor of the Central Bank was forced to wade into the debate when questioned during a media conference with respect to the Government's ability to pay what victims were seeking. The Governor of the Central Bank stated that if Government loaned the money to pay the victims, there would be no money left in the commercial banks to lend in Seychelles, and made it clear that in her view, the sums being identified were not feasible. These comments caused anger to the victims in the community, who lamented claims of unfeasibility without any evidence of attempts on the part of Government to raise funds to ensure reparations could be paid. In addition, the TRNUC Victims Committee members were criticised, with complainants bemoaning that nearly all members of the Committee had been forced into exile, and for that reason forced exile was identified as requiring a considerable compensatory payment which did not take account of the fact that those who stayed in Seychelles and did not go into exile suffered greater hardships than those that fled. Additional criticism was made of having a husband and wife on the TRNUC Victims Committee, and broader questions were raised as to how and why these members of the Committee had been selected. In response, the Chairperson of the TRNUC Victims Committee prepared a TRNUC Victims Committee progress report, which identified the monetary compensation being sought by the victims, provided justification for the sums proposed by reference to the average earning potential of a person in Seychelles through their lifespan, and postulated numerous avenues where funds could be raised to fend off complaints based on the use of taxpayer money. For example, it was suggested that non-performing Government assets could be prioritised, ill-gotten gains confiscated, and one of the Seychelles' many islands sold, amid numerous other proposals. Copies of the progress report were also sent to the office of the President, and various national leaders including the Chief Justice, the Human Rights Commission, the Anti-Corruption Commission and the Ombudsman.

On Friday 20 May 2022, the Commission met with the TRNUC Victims' Committee to discuss public receptiveness to the Reparations Policy and the comments made about feasibility. In that meeting, the Commission noted that the victims needed the support of the community for the payment of reparations, and further clarifications were made by the Committee with respect to the Reparations Policy. The one-time payment of monetary compensation was clarified as being per violation and not per complainant, and the Reparations Allowance was limited to one allowance per complainant regardless of the number of violations that gave rise to the right to the reparations allowance. Further, the one-time monetary sums being suggested were "up to" amounts with the actual amount being determined by the successor body to the Commission by reference to the severity of the violation and the number of victims of the violation. It was further clarified that the one-time payment would be awarded to any heirs of the complainant(s), pursuant to the laws of the Seychelles, but that the Reparations Allowance of SR 15,000 per month would not be awarded to such heirs, as the reparation allowance is limited to the direct victim of the violation. Further, in making any award for monetary compensation, consideration shall be given to any compensation payment already received, whether by agreement with Government authorities or via court judgement. These clarifications significantly limited the amount of compensation being sought by the victims. However, the Commission also considered it important for it and the TRNUC Victims' Committee to meet the criticisms being made by the broader community and to allow the general public to have their say about what was being proposed should be recommended by the TRNUC.

In that regard, it was agreed that the TRNUC Victims' Committee would lead a further meeting that would be open to the general public at a venue that could house a considerable number of participants and that technical efforts be made to allow people outside Seychelles to actively participate through the setting up of a zoom link. This meeting was scheduled for 6 July 2022. Commissioner Koui Gbilimou undertook to hold weekly meetings with the TRNUC Victims Committee prior to the 6 July 2022 public meeting, to plan for that meeting with a standard invitation to the other Commissioners to attend.

On 14 June 2022, the Commission had met with the President of Seychelles to discuss various operational aspects of the Commission as it moved closer to the end of its mandate, and during that general meeting, the Commissioners raised again the issue of reparations for victims and the Government's commitment to them, among other concerns raised by the TRNUC Victims Committee. Some of the primary concerns expressed in that context was the feasibility for the Government to implement the quantum of reparations currently being discussed and broader public buy-in to reparations and their potential impact on broader reconciliation efforts. In that respect, the Commissioners could appreciate the President's dilemma of both satisfying the victims' right to reparations and the broader community's lack of support for them. Moreover, the Commission could also appreciate the sentiment expressed by the President that all Seychellois had suffered under the previous administration. However, the President's commitment to the implementation of feasible reparations was also clear.

On 15 June 2022, Vice-Chair Green and Commissioner Wong attended the weekly TRNUC Victims Committee meeting with Commissioner Koui Gbilimou, and shared the concerns raised in the meeting with the President with the Committee. These concerns had already been highlighted and shared during the Victims Plenary Meeting, and discussions focused on feasibility of the original monetary compensation sums identified by the focus group. It was agreed at the 15 June 2022 meeting that the Vice-Chair of the Victims Committee, Mr. Regis Francourt, would present a reconsidered view of the quantum of reparations sought based on the economic situation of Seychelles, underpinned with sufficient reasoning to be palatable to the general community of Seychelles. Unfortunately, while the Commissioners present considered the meeting productive, over the next days, the Commissioners were

notified of general dissatisfaction by the TRNUC Victims Committee with that meeting and with the Commission more generally.

The Chairperson of the TRNUC Victims Committee, writing on behalf of its members, advised the Commission on 15 June 2022 that the Committee members were unhappy with the way things were developing. The TRNUC Victims Committee was concerned that The TRNUC Victims Committee Progress Report of May 2022 was not being shared by email to all complainants as had been requested, as many people had requested access to the report, and the Committee did not understand what it perceived as the reluctance on the part of the Commission to facilitate its distribution to its complainants. The TRNUC Committee was concerned that a failure to disperse this report to the victims was resulting in misinformation being generated uncontrollably on social media about the report. The Chairperson further advised the Commission that a majority of the Committee members did not believe they were being told the truth about the meetings between the Commissioners and the President, and that "obtaining information from the Commission was like extracting teeth". The TRNUC Committee were also dissatisfied with the advice of the Commission that the President had indicated that he would communicate directly with the Commission and not a sub-committee that it had created. The TRNUC Committee felt that basic etiquette required the President to communicate this position directly with the TRNUC Committee, thereby recognising it as part of the Commission as established under the TRNUC Act.

The TRNUC Victims Committee Chairperson also raised the Committee's serious concerns with the Commission's Amnesty Guidelines, and in particular the clause which he interpreted as meaning that amnesty should not be granted before reparations have been paid but which effectively mirrored the terms of Section 12 (6) (b) of the TRNUC Act that a grant of amnesty had no impact on reparations. The Chairperson of the TRNUC Victims Committee also informed the Commission that "people have commented that it appears the TRNUC team is taking the side of the perpetrators especially when a Commissioner said on TV that the army recruits young soldiers and train them to kill, which is completely untrue and people are also saying that an order to kill can and must be refused by a soldier, so let us not make excuses for the perpetrators".

The email from the Chairperson of the TRNUC Victims Committee was followed by a further email sent from the Co-Secretaries of the TRNUC Victims Committee, Mrs. Julianna and Mr. Lewis Betsy, on 16 June. In that email, the Co-Secretaries reiterated the disappointment of the Committee, and again expressed the view that they were not told all the issues the Commission had discussed with the President relevant to the Victims Committee and were only told about what he said at the first meeting: "The President was angry with the way we conducted the meeting and he was being judged before the final report was sent to him".

The Co-Secretaries noted that they were given limited time to prepare for the Victims Plenary meeting and were "thrown into the lion's den" on the very first day. They also stated that they should have asked more questions in detail as to where the compensation figures came from and where the Government is going to get money to pay all the victims.

Nonetheless, the Co-Secretaries noted that "the reason to stay strong and be positive is to continue to fight for justice for all victims" and that "we fought the Albert Rene (SPUP) clan and we are now fighting a government who we thought believes in fairness and democracy". The Co-Secretaries further noted that it was not the complainants who advocated the law to set up the TRNUC; that they were the victims of the Coup d'état 1977 who had suffered for over 44 years; and that no amount of money would replace any suffering, but they wanted justice and closure. The Co-Secretaries stated that they would

not be silenced, and they would continue to fight for real democracy. They further stated that they wondered "if the TRNUC is actually fighting for a mandate that they believe is fair and just", that their "impressions are that they want to give amnesty to perpetrators, despite the outcry from the general public", and that "This is so unjust, and particularly so if it is happening behind closed doors".

The Co-Secretaries further postulated that the TRNUC Victims Committee would "no doubt be replaced on the President's pleasure", referencing the possibility that the three remaining Commissioners could be replaced by those that would agree with the President's "every say and ask no question". The Co-Secretaries further advised the Commission that "at the present moment we are being used by the TRNUC. We feel let down and totally disgusted with this kind of attitude. We have principles and believe in freedom of expression and real democracy, but we are being treated like kids". They also requested the presence of all Commissioners at their meeting of Wednesday, 22 June 2022, "as things are getting out of hand".

At the meeting of 22 June 2022, it was unfortunate that all Commissioners could not be in attendance as requested and the meeting was attended by the Chairperson, Commissioners Koui Gbilimou and Commissioner Archbishop Wong. At the commencement of the meeting, the Chairperson requested that the Commissioners and the TRNUC Victim's Committee address the breakdown of trust of the TRNUC Victim's Committee with the Commission and frank discussion followed. The Commission reiterated the importance to it of the TRNUC Victim's Committee as representative of the voice of the victims, who were effectively the clients of the Commission and the people that the Commission was mandated to serve. The Commission expressed its appreciation for the frustrations of the TRNUC Victims Committee by their non recognition by the President and the Chairperson undertook to write to the President and formally advise of the establishment of the TRNUC Victims Committee pursuant to Section 8 (2) (f) of its Act. In addition, the Commission expressed its appreciation for the frustration of the TRNUC Victims Committee that the Commission seemed unwillingly to facilitate broader dissemination of their Progress Report. The Commissioners present underscored the Commission's limited resource and the difficulties it had faced in disseminating the Reparations Policy but committed to providing what assistance it could to the wider dissemination of the report. The Commissioners were also informed by the TRNUC Victims Committee that there was "a lot of chatter outside" including claims that the Commissioners were coaching perpetrators with respect to what to say to ensure a grant of amnesty. It was agreed by all participants that it was unhelpful to pay attention in future to outside noise and that it was important to nurture and maintain a relationship of trust between the Commissioners and the TRNUC Victims Committee. Both the Commission and the TRNUC Victims Committee reiterated their commitment to establishing a strong and trusted working relationship for the broader benefit of the victims. It was further agreed the focus of the TRNUC Victims Committee would be maintained on representing the victims and ensuring their voices were heard. The Commissioners reiterated their deep appreciation to the TRNUC Victims Committee and noted the particular qualities of the members of the Committee that made them extremely valuable representatives of the victims' community.

In further preparation for the 6 July 2022 meeting, various representatives of the public were sent direct invitations as well as a general call being made to the public to come and have their say. The Commission specifically invited the leader of the US party, given that the calls that had been made at the Victims' Plenary Meeting for the US Party, as the successor to the "Coup d'état party", be made to pay reparations to victims. The Commission also invited the Governor of the Central Bank, the Human Rights Commissioner, the Ombudsman, and the Anti-Corruption Commissioner to attend the meeting. Unfortunately, only a representative of the Human Rights Commissioner was present. While the Commission had made facility to house some 300 people in person only 70 participants attended and the event was live streamed on you-tube, face-book, zoom and broadcast live by SBC three. Notably,

while the Commission had hoped those who has used social media to oppose reparations for victims would have been present to have their say, none of those people attended and the largest participants in the meeting were the victims.

All the presentations made at the meeting underscored the right of victims to reparations for human rights violations and the responsibility of the state to pay reparations and in contrast to earlier meetings the obligation of the State was universally accepted by the participants. In this regard, the Commission was extremely grateful to the United Nations Special Rapporteur for Truth, Justice and Reparations, Professor Fabian Salvioli, who provided a pre-recorded statement for the Commission to share at the meeting, which strongly underscored both victims' rights to reparations and the State's obligation to provide reparations to victims in international law.

While the purpose of the meeting was largely to settle the quantum of monetary reparations to victims it was also used as an opportunity to remind the general public of why the victims were seeking reparations. Members of the TRNUC Victim's Committee shared their stories with the general public and outlined their suffering and the suffering of others to which they had borne witness. When the floor was open to the participants, more stories were shared by the victims present.

During the discussions there appeared to be broad consensus amongst the participants, who accepted that recommendations had to be feasible, to the amendment previously made to the Reparations Policy to specify monetary awards in terms of "up to" to accommodate both the number of claimants and the severity of the violation and to limit the award of reparations to per violation and not per victim. In addition, the TRNUC Victims Committee, proposed that the monthly allowance be scrapped and just one lump sum payment awarded as a means of ensuring closure. It was agreed that victims would be given one week to provide their feedback on this proposal in writing to the Commission through email.

The Commission and the TRNUC Victims Committee received a limited number of responses to that call but determined on the basis of the views expressed that the monthly allowance would be scrapped. This would ensure, as communicated by one victim, that future generations of Seychellois would not be burdened by events of the past.

Taking account of the views that had been expressed by victims, the amended monetary recommendations contained within the TRNUC's Reparations Policy are as follows:

	Violation	**Corresponding one-time payment amount**
1	Unlawful killing/murder	SCR Up to 20 million

2	Enforced disappearance of persons	SCR Up to 20 million
3	Forced exile	SCR Up to 10 million
4	Torture	SCR Up to 5 million
5	Rape and other acts of a similar nature	SCR Up to 5 million
6	Kidnapping	SCR Up to 5 million
7	Unlawful detention or other deprivation of physical liberty	SCR Up to 3 million + SCR 2,000 per day of detention
8	Abuse of office by a Government official, including the executive, judiciary, or legislature	SCR Up to 2 million
9	Wrongful denial of the right to employment	SCR Up to 2 million
10	Wrongful termination of employment	SCR Up to 2 million

11	Unjustified acquisition or loss of property or business as per Annex C below Note: Complainants who accept elements of the Government's new scheme for the return of undeveloped land should qualify for the reparation amount of SCR 1 million, and be compensated at current market value for not only land which is not to be returned to them under the scheme, but also compensated for acquired lands previously sold, used or disposed of by the Government. Compensation values concerning the latter lands may be established by arbitration.	*SCR Up to 1 million + Current market value of the property or business if not recovered or already compensated + loss of income if applicable, to be implemented in accordance with the recommendations contained in Annex C Note: The awarding of compensation for the violation of unjustified acquisition or loss of property or business will not be capped at SCR 20 million.
12	Forceful eviction from legally-owned building or land as per Annex C below Note: Victims benefitting from the Government's undeveloped return of land scheme will only qualify for the recommended reparation amount of SCR 1 million and the current market value of any property which is not returned to them under the Government's undeveloped return of land scheme.	*SCR Up to 1 million + Current market value of the property if not already compensated or given replacement housing, to be implemented in accordance with the recommendations contained in Annex C Note: The awarding of compensation for the violation of forceful eviction from legally-owned building or land will not be capped at SCR 20 million.
13	Other acts of a similar character causing suffering or injury to body, or to mental or physical health	SCR Up to 1 million

*It should be noted that all property, business, and land unreturned under the Government's undeveloped return of land scheme are to be treated under the 'Corresponding one-time payment amount' sections for items 11 and 12 of the Monetary Reparations Structure.

The Commission continued its meetings with the TRNUC Victims Committee to fine tune the policy thereafter and the Reparations Policy was finalised in later July 2022.[150] Unfortunately, despite best efforts the relationship between the Commission and the TRNUC Victims Committee was not always smooth running. Prior to the meeting of 21 July 2022 disputes arose between the two about the selection of members of the Committee and the description of that process contained with the Second Report of the TRNUC Victims Committee of July 2022. The TRNUC Victims Committee explained that they felt that some of the Commissioners were being influenced by the opposition of the President to the members of the Committee

[150] TRNUC Reparations Policy, Annex 1.

and attempting to distance themselves on that basis. The Chairperson retained the Commission's transparency with the TRNUC Victims Committee and explained that it was not being influenced by Presidential attitude and that there were genuinely different recollections amongst the Commissioners about the appointment of the members of the TRNUC Victims Committee and the most important element was that they had been endorsed at the Victims plenary meeting by the 100 plus victims present at that meeting. However, the Chairperson also explained that some of victims of whom the TRNUC Victim's Committee were representative, had complained to Commission members that the approach of the TRNUC Victims Committee was endangering the potential of the President agreeing to the payment of reparations. The Chairperson further explained that the interests of the TRNUC Victims Committee and the Commission's interests were not always aligned. In that regard, the Chairperson reiterated that the Commission's mandate was a mandate of reconciliation and forgiveness, which was being undermined by the TRNUC Victim's Committee on social media and specifically identified comments made by one of the TRNUC Victim Committee members with respect to a mass organized by perpetrators on social media denigrating that event as a joke. The Chairperson explained that the Commission had attempted to accommodate the desire of victims for justice by going beyond its specific mandate and recommending criminal prosecutions for persons the Commission had found to have perpetrator status before the Commission. The Commission reiterated that nowhere in the TRNUC Act was the Commission given the mandate to do this – its mandate was to grant amnesty where certain conditions were satisfied and to promote reconciliation and healing, not punitive measures.

At the same meeting the TRNUC Victims Committee noted that its plans to transform into an NGO on the expiration of the mandate of the Commission were well underway and the TRNUC Victims Committee members thanked the Commission for their establishment as a Committee under the Commission's mandate noting that in their view it was one of the most important steps that the Commission had taken. The TRNUC Victim's Committee further expressed their strong support for the work of the Commission during its last weeks and noted the considerable pressure being borne by the Commissioners and staff and expressed the view that the Commission had not been well supported by relevant Government authorities throughout its mandate and that effectively, the Commission had been "let down".

The Commission notes that on 26 July 2022 the TRNUC Victims Committee registered pursuant to the Registration of Associations Act as the TRNUC Association of Victims and held a press conference on 5 August 2022 announcing their formation as an independent association dedicated to representing the interests of the victims that had filed complaints before the TRNUC.

12. Application of the Reparations Policy

While the Reparations policy was being finalised[151] by the Commission in collaboration with the TRNUC Victim's Committee and the broader community, work had been ongoing in the background in the application of the policy to completed determinations to guide the work of the successor body being proposed by the Commission to apply the policy following its completion of its determinations and delivery of its Final Report on 9 August 2022.

One of the Commission's pro bono Senior International Legal Consultant, Marrisa Kardon Weber, who had been instrumental in the development of the policy and the International Investigator, Demetri Wijesinghe, enlisted the support of Professor George Edwards of the Indiana University McKinney School of Law, Program in International Human Rights Law, who in turn solicited the assistance of Student Research Associates from the International Human Rights Program at the Indiana University McKinney School of Law and the Chulalongkorn University Faculty of Law. The Student Research Assistants, under Professor Edward's supervision were tasked with drafting recommendations for reparations for a select number of TRNUC cases by application of the policy. In cooperation with the Senior International Legal Consultant and International Investigator, Professor Edwards hosted several meetings with the Student Research Associates between 18 February 2022 and 8 April 2022 to discuss the progress made by the Student Research Associates and to confirm that the approach being adopted in application was as intended by the policy.

On 8 July 2022, Professor Edwards provided the Commission with the draft recommendations for reparations for the select TRNUC cases. On that same date, Professor Edwards organised a meeting with the Senior International Legal Consultant and International Investigator to discuss the final changes that had to be made following changes made to the Draft Reparations Policy subsequent to the Commission's engagements with the victims on 27 April 2022 and 6 July 2022. On 20 July 2022, Professor Edwards provided the Commission with finalised recommendations for reparations on the select cases. That report will be made available to the Commission successive body

In that regard the Commission notes that the approach it has adopted in the development of a policy to be applied by a successor body was made necessary due to the severe resource and capacity constraints under which it operated throughout its mandate. Notably, the Reparations Policy in its final form, as guided by the victims, confers considerable discretion upon the Commission successor body to craft recommendations targeted to the needs of the specific victim. This approach is responsive to the initial objections made by victims concerning a violation approach application of the policy as opposed to an examination of the particular circumstances of a victim within the category of victims found to have suffered the same violation. Mindful of the need for continuity, and as already noted, the Commission has recommended that three of its original Commissioners make up the successor body, Vice-President Green, Commissioner Koui Gbilimou and Archbishop Wong.

[151] Volume V, Reparations Annex 1, Reparations Policy

TRUTH, RECONCILIATION
AND NATIONAL UNITY COMMISSION

VOLUME V

ANNEX I

S. I. OF 2021

THE TRUTH, RECONCILIATION AND NATIONAL UNITY COMMISSION ACT, 2018

REPARATIONS POLICY

ARRANGEMENT OF SECTIONS

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I. PREAMBLE

The Reparations Policy promotes a victim-centred approach to reparation. It strives to guide the Truth, Reconciliation and National Unity Commission ("TRNUC" or "Commission") and its recommended successor body to make recommendations that both are in consultation with victims and result in sustainable redress. The Policy is intended to benefit not only individual survivors of human rights violations as defined by the Truth, Reconciliation and National Unity Commission Act of 2018 ("TRNUC Act"), but also the communities impacted by such violations and to ensure that such violations do not recur.

The Truth, Reconciliation and National Unity Commission,

Recalling the TRNUC Act, which establishes a complaint-driven process and specifically refers to the Commission's objective to determine "the appropriate reparations for victims" and "the appropriate rehabilitation for victims and perpetrators";

Understanding the context which led to the creation of the TRNUC Act and the TRNUC, in which the party that took power with the Coup d'état of 1977 entrenched and maintained a system of political discrimination against those perceived to be against that party, and ensured that perceived opposition elements were denied their human rights across all aspects of their lives from the Coup d'état of 1977 until the transfer of executive power away from that party in October 2020;

Acknowledging the pain, anguish, and loss suffered by victims of human rights violations, and further acknowledging that such violations were carried out pursuant to the strategy used by the Government that had seized power through the Coup d'état of 1977 in order to maintain that power by creating a "with us or against us" culture and ensuring the systematic discrimination of those deemed against it in all aspects of their lives, and that this systematic discrimination fundamentally denied them of their rights to economic prosperity through unlawful acquisitions of their land and property and through denial of the right to benefit from government-controlled education, employment, land allocation, and health care, and to live free from other acts of abuses of Government power, all having a generational impact on the victims and subjecting them to lives lived in fear;

Maintaining that important elements of justice are restoration, restitution, and reparation, whether there is punishment or not, and that victims of human rights violations have an inalienable right to fair and adequate reparation and rehabilitation, especially in a context where provision is made for amnesty and in the context of Seychelles, where human rights violations have had long-lasting, generational impacts;

Affirming the positive right of individuals and communities to reparation, as human rights that go unenforced with sufficient remedies are diminished and even rendered hollow;

Recalling that following the "reintroduction" of the multiparty system in 1993, victims who had their land illegally acquired under the Lands Acquisition Act of 1977 during the Second Republic were granted a constitutional right pursuant to Schedule 7, Part III of the 1993 Constitution to have that acquisition reviewed and land returned or adequate compensation paid, but that the Government did not always discharge that obligation with good faith and denied many victims the remedies promised by the Constitutional provisions;

Noting also that all those persons who had their land acquired by means of forced sales during the Second Republic were denied the rights of any review of that acquisition pursuant to the 1993 Constitutional provisions based on the fiction that land sold to Government during the Second Republic was a transaction between a willing seller and willing buyer;

Realising the distinct need to prioritise urgent implementation of and access to the Trust Fund for Victims in order to ensure adequate funding for reparation measures;

Confirming that the measures recommended and subsequently implemented in any given category of reparation will not preclude a victim from being considered under other categories of reparation;

Believing that the need to grant reparation to victims is one of urgency and that such grants of reparation will contribute to the building of a new and just moral order, as the payment of reparations to victims is a necessary step to entrenching respect for human rights in the culture of Seychelles and ensuring the non-recurrence of such violations;

Reaffirming the United Nations Basic Principles of Reparations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Law Commission's Draft Articles on the Responsibility of States;[1]

HEREBY undertakes and recommends the future undertaking by other or successor bodies of the measures and principles outlined in this Policy as forming the first steps to making adequate and fair reparation and rehabilitation to those victims as described by the TRNUC Act and towards furthering reconciliation and national unity.

II. CONTEXTUAL BACKGROUND

A. The TRNUC Act and Reparation

The TRNUC Act mandates the Truth, Reconciliation and National Unity Commission ("TRNUC" or "Commission") to determine the appropriate reparations for victims of human rights violations committed in relation to the 1977 Seychelles coup d'état ("1977 Coup"). The Act further mandates the TRNUC to recommend to the President of Seychelles that these reparations be adopted. As the Commission previously reported to the President, given the lack of resources made available to the Commission, it recommends the establishment of a successor body to the Commission, made up of three current members of the Commission,[2] to provide detailed recommendations to the President as to which reparations should be awarded to each respective complainant, applying this Policy based on the determinations made by the TRNUC for each case. Once the Commission's successor body provides the President with its recommendations, the Government of Seychelles will be responsible for implementing them.

B. Definition of terms

1. **Reparation**
   a. According to Section 2(4) of the TRNUC Act, reparations made to a victim can include any form of –
      i. compensation;
      ii. facility; or
      iii. concession.

   b. More specifically, according to international legal standards, reparations can include any form of –
      i. satisfaction;
      ii. restitution;
      iii. rehabilitation;

[1] Arts. 30 and 31 of the Draft Articles set out the basis for the state's duty to 1) cease the wrongful act, 2) offer guarantees of non-repetition, and 3) make full reparation for material and moral injuries caused.

[2] In particular, this will include current Vice-Chairperson Michael Green, Commissioner Archbishop Wong, and Commissioner Jacques Koui Gbilimou, who have expressed their agreement to serve on the successor body; the Commission thus hereby recommends their appointment thereto.

iv. guarantees of non-repetition; or
v. compensation.

2. **State responsibility**
   a. The foundational layer of "reparation", to achieve reconciliation within a state, is endorsement of the legal right of victims to petition the state for reparations,[3] trust in the state to stop, repress and redress violations, and to take accountability for violations against both individuals and communities.
   b. There is recognition that it is the responsibility of the state to provide justice for victims of human rights violations and that sustainable justice requires (1) judicial accountability, (2) truth, and (3) reparations.
   c. This responsibility of states to combat impunity is a matter of justice for the victims, a deterrent with respect to future human rights violations, and a duty to uphold the rule of law and public trust in the justice system.

3. **State capacity**
   a. A government's ability to accomplish its intended policy goals.

4. **Victims**
   a. According to Section 2(7) of the TRNUC Act, a victim is "[...] a person who has suffered any harm or detriment as a result of any violation."
   b. International law helps narrow the scope of how to define this broad conception. Victims under international human rights law include:
      i. Persons who individually or collectively suffered harm, including –
         (1) Physical or mental injury;
         (2) Emotional suffering;
         (3) Economic loss; or
         (4) Substantial impairment of their fundamental rights.
      ii. As a result of acts or omissions that constitute violations of international human rights law
      iii. Including, where appropriate and in accordance with domestic law –
         (1) Immediate family of the direct victim; and
         (2) Persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.
   c. *See* "V. Operational Matters" for additional requirements within the context of the TRNUC.

III. GUIDING PRINCIPLES AND STANDARDS

The Commission, or its recommended successor body, may therefore recommend any of the **following forms of reparation:**

i) **Satisfaction**, or the pursuit and acceptance of truth, but also of responsibility and fault.

ii) **Restitution**, or the restoration of the victim to the original situation before the gross violation(s) of international human rights law occurred, as defined by Principle 19 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("Basic Principles").

iii) **Rehabilitation**, or the restoration of the victim's full physical and mental rehabilitation as well as reputation through the provision of medical and psychological care after a human rights violation has occurred.

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[3] *See* International Covenant on Civil and Political Rights [ICCPR], Dec. 16, 1966, 999 U.N.T.S. 171, art. 2(3), *ratified* 5 May 1992. The Commission recalls the right to an effective remedy is also a *jus cogens* or peremptory norm of international law. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), art. 8.

iv) **Guarantees of non-repetition**, or measures that safeguard against the repetition of previously violated human rights. The Basic Principles classify the jurisprudence and practice of "guarantees of non-repetition" as encompassing, *inter alia*, orders for states to investigate, identify, and prosecute perpetrators of the violation(s), so long as they have not received an amnesty from the Commission; interventions such as maintaining civilian authority over military and security forces; strengthening the independence of the courts; protecting legal, medical, media and related staff and human rights defenders; promoting international human rights standards in public service; promoting mechanisms for preventing and monitoring social conflicts and their resolution; human rights training programs for various types of state officials, and throughout the education system; and directives to improve the conditions of prison systems and detention practices.

v) **Compensation**, or monetary awards to acknowledge violations and serve as a lesson to the Government of Seychelles as to the consequences of committing human rights violations akin to those enshrined in the TRNUC Act.

The Commission, or its recommended successor body, shall recommend the above forms of reparations while taking into account the **following principles**:

i) **Non-discrimination**, or treating every individual equally, regardless of their ethnicity, nationality, gender, religion, race or any other form of identity or social construct.

ii) **Fairness**, or providing consistent forms of reparation to similarly-situated victims and for similar violations. Transparent standards and procedures should be established to ensure such equal treatment.

iii) **Equitable distribution of resources**, or providing reparations that are reasonably and adequately proportionate to the gravity of the harm that the violation caused.

iv) **Sustainability and Feasibility**, or providing reparations within the limits of state capacity and available resources. While reparations should be inclusive, far-reaching and long-lasting, they should be administered while also taking into consideration the realistic capacity of the state to both fulfil its responsibilities and uphold its international obligations.

v) **Do No Harm,** or duly considering risks of unintended consequences, and actively seeking to avoid foreseeable harm to individuals or communities from the reparation provided.

vi) **Promote healing and advance social cohesion**, and provide reparations that promote reconciliation, while considering social norms and practices specific to the context of Seychelles.

vii) **Reinforce state morality, ethics and trust**, through educational programs and providing reparations, with the goal of reinforcing acceptable norms of state conduct and morality and promoting constructive consultation and debate where they may conflict with traditional norms and practices.

In recommending reparations, the Commission, or its recommended successor body, shall further take into account the **following standards**:

i) Reparations should be **tailored to victims** of human rights violations.

ii) **Monetary and non-monetary reparations** should be considered as complementary measures. The Commission should consider avoiding ordering monetary reparations exclusively for any given case, as complementary non-monetary reparations might **better satisfy victims' long-term needs.**

iii) **Appropriate non-monetary reparations,** referenced in Section 3(7)(e) of the TRNUC Act, should include restitution, rehabilitation, satisfaction and the guarantees of non-repetition as defined in this Policy.

iv) **Individual measures** should be, where appropriate and effective, **accompanied by communal reparations** to recognise the collective suffering of victims.

v) **Consultation** with victims on the design and implementation of reparations measures is mandatory and should involve active participation and consultation of gender, ethnic, cultural and religious groups.

vi) Reparations should be designed and implemented with a view to achieving transformative reparations, to **correct persisting structural inequalities**.

IV. POLICY FRAMEWORK

A. Introduction - Categories of Violations and Harm

The Policy Framework provides measures that should be regulated in order to effectively address and provide reparation for each category of harm identified below. In relation to each measure, this Framework provides both the corresponding criteria for victims who will be considered, and the envisaged methods of provision.

The **primary categories of violations** before the TRNUC are as follows, if carried out during or in relation to the 1977 Coup:

1. Unlawful killing/murder
2. Unlawful imprisonment or other deprivation of physical liberty
3. Torture
4. Rape
5. Enforced disappearance of persons
6. Kidnapping
7. Forceful eviction from legally-owned building or land (e.g. physical force; intimidation)
8. Unjustified acquisition or loss of property or business (e.g. through corruption)
9. Wrongful denial of the right to employment (e.g. blacklisted from government-run institutions due to political affiliation)
10. Wrongful termination of employment
11. Forced exile
12. Abuse of office by a Government official, including the executive, judiciary, or legislature (e.g. through corrupt practices)
13. Other acts of a similar character causing suffering or injury to body, or to mental or physical health.

Further, this Policy Framework identifies **seven (7) categories of harm**, which are potentially overlapping, caused by the above violations:

1. Emotional pain and suffering
2. Physical pain and suffering
3. Loss of life
4. Material or financial loss
5. Identity-based harm
6. Symbolic harm
7. Educational harm.

B. Detailed Policy Framework

1. Detailed Framework Chart

These categories of harm, and corresponding reparation measures, are not intended to be viewed in isolation or as exhaustive. While the Commission has undertaken to follow this Policy's guidance when recommending similar reparations to similarly-situated victims, the Commission shall nevertheless be continuously apprised of each individual victim's preferences and, where fair and reasonable, make recommendations informed by such.

Emotional Pain and Suffering *As a result of a violation, such as rape, torture, political victimization as an abuse of office or as other acts of a similar character causing suffering or injury to body or to mental or physical health, forced exile or a violation against a loved one, such as unlawful killing or enforced disappearance.*		
Measures	***Criteria***	***Provision***
A one-time payment in the form of financial compensation in recognition of a victim's emotional pain and suffering (*See* "Monetary Reparation Structure" below).	Victims who endured and/or continue to endure emotional pain and suffering as a result of the violation.	The amount shall be identical for all victims of the same violation.
Psychological health services through a support structure that is consistent with the victims' preferences and is considered by the Commission, or its recommended successor body, to be appropriate, necessary, fair and of sufficient quality.	Victims who endured and/or continue to endure emotional pain and suffering as a result of the violation. The requisite severity of such pain and suffering is such that it requires emotional intervention in order to improve.	The government will facilitate access to such services.
Restorative justice practices to be developed in consultation with the victims	Victims who endured and/or continue to endure emotional pain and suffering as a result of the violation, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.
Physical Pain and Suffering *As a result of a violation, such as torture or rape or other acts of a similar character causing suffering, or injury to body or to mental or physical health*		
Measures	***Criteria***	***Provision***
A one-time payment in the form of financial compensation in recognition of a victim's physical pain and suffering (*See* "Monetary Reparation Structure" below).	Victims who endured and/or continue to endure physical pain and suffering as a result of the violation.	The amount shall be identical for all victims of the same violation.
Medical health services through a support structure that is consistent with the victims' preferences and is considered by the Commission, or its recommended successor body, to be appropriate, necessary, fair and of sufficient quality.	Victims who continue to endure physical pain or suffering as a result of the violation. The requisite severity of such pain and suffering is such that it requires material intervention in order to improve.	The government will facilitate access to such services.

Restorative justice practices to be developed in consultative with the victims.	Victims who endured and/or continue to endure physical pain or suffering as a result of the violation, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.
Loss of Life *As a result of either unlawful killing or any other violation that might have led to the death of the victim, such as torture, other acts, or enforced disappearance.*		
Measures	***Criteria***	***Provision***
A one-time payment in the form of financial compensation in recognition of the loss of life of a victim's loved one (*See* "Monetary Reparation Structure" below).	Victims whose loved one died as a result of either an unlawful killing or other violation.	The amount shall be identical for all victims of the same violation.
Investigation into the destruction of secret documents and archives concerning a violation.	Every individual has the right to view his or her own personal file. All relevant documents have been destroyed. For this reason, near-relatives and dependents of the deceased are entitled to an investigation into the destruction of documents and archives pertaining to their case.	The government will facilitate such investigations.
Restorative justice practices to be developed in consultation with the victims.	Victims whose loved one died as a result of either an unlawful killing or other violation, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.
Procedural measures, such as issuing of death certificates and death declarations.	Victims whose loved one died as a result of a violation, and for whom such procedural measures would be applicable and appropriate.	The government will facilitate the fulfilment of these measures.
Exhumations, identifications and reburials of victims, including tombstones and shrines, carried out with full respect for the cultural and religious values and dignity of the victims and their loved ones.	Victims whose loved one died as a result of a violation, and for whom evidence suggests such measures would be applicable, appropriate and feasible.	The government will arrange for exhumations, reburials and the purchase of tombstones and shrines in a thoughtful manner as recommended by the Commission, or its recommended successor body, and funded by the Trust Fund for Victims.
Material or Financial Loss *For example, the loss of property, employment, education or the right to choose where to live due to a violation.*		
Measures	***Criteria***	***Provision***

A one-time payment in the form of financial compensation in recognition of a material or financial loss, such as of property, employment, education, or the right to choose where to live (*See* "Monetary Reparation Structure" below).	Victims who suffered a material or financial loss, such as of property, employment, education, or the right to choose where to live, as a result of the violation.	The amount shall be identical for all victims of the same violation.
Restorative justice practices to be developed in consultation with the victims.	Victims who endured a material or financial loss as a result of the violation, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.
Identity-based Harm *Specifically, harm to a victim's identity (e.g. religious, cultural or gender). Examples include, (1) the enforced disappearance or murder of a loved one, leaving the surviving victim unable to bury them in accordance with cultural or religious practices; (2)rape or other acts of a similar character; and (3) the forceful taking of cultural property.*		
Measures	***Criteria***	***Provision***
A one-time payment in the form of financial compensation in recognition of identity-based harm endured by the victim (*See* "Monetary Reparation Structure" above).	Victims who either endured identity-based harm as a result of the violation, or were subjected to the violation because of their identity.	The amount shall be identical for all victims of the same violation.
Informed by consultation with victims, **traditional cultural and religious practices** should, where relevant and appropriate, be considered an effective reparations measure.	Victims who endured identity-based harm as a result of the violation, and for whom traditional cultural and/or religious reparative practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of traditional cultural and/or religious reparative measures. Such measures could include the participation of cultural and religious actors.
Psychological health services through a support structure that is consistent with the victims' preferences (e.g. individual or group therapy) and is considered by the Commission, or its recommended successor body, to be appropriate, necessary, fair and of sufficient quality.	Victims who endured and/or continue to endure emotional pain and suffering as a result of the identity-based violation. The requisite severity of such pain and suffering is such that it requires emotional intervention in order to improve.	The government will facilitate access to such services.
Restorative justice practices to be developed in consultation with the victims.	Victims who endured identity-based harm as a result of the violation, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.

Provision of childcare services during -related ceremonies.	Victims who would like to participate in TRNUC-related ceremonies (e.g., the unveiling of a memorial or attendance of a restorative justice circle), and who need childcare in order to do so.	The government will facilitate access to childcare in this context, funded by the Trust Fund for Victims.
Guarantees of non-repetition, to safeguard against the repetition of the previously violated human right(s). Such guarantees can take the form of, for example, (1) recommending the State to investigate, identify and prosecute perpetrators of the violation(s), so long as they have not received an amnesty from the Commission, (2) strengthening the independence of the courts, (3) reviewing and reforming laws contributing to or permitting the commission of violations, (4) protecting legal, medical, media and human rights defenders, and (5) promoting international human rights standards in public service through training programs.	Victims who endured identity-based harm as a result of the violation, and for whom a guarantee of non-repetition might be healing, assuring or otherwise beneficial.	The government will facilitate the planning and execution of guarantees of non-repetition.

Symbolic Harm

For example, a violation that caused community-wide distrust in the government or suffering that more traditional forms of reparation might not be able to reconcile or restore.

Measures	*Criteria*	*Provision*
A one-time payment in the form of financial compensation in recognition of a victim's suffering, whether individual or collective (*See* "Monetary Reparation Structure" below).	Victims who endured harm as a result of a violation against a collective and/or that more traditional forms of reparation might not be able to reconcile.	The amount shall be identical for all victims of the same violation.
Apologies and public acknowledgements from those found responsible by the TRNUC. If the responsible actor is not available (e.g., deceased), a high-level government official shall provide an apology and/or public acknowledgement on the responsible actor's behalf.	Victims of violations for which the perpetrator has been determined.	Apologies and public acknowledgements will be facilitated by the government.
Procedural measures, such as issuing death certificates, death declarations, clearing of victims' names, and taking appropriate action to expedite cases and payments.	Victims whose loved ones died as a result of a violation, who were found wrongly accused of perpetrating a violation, and who require expediency and payments, in cases, where appropriate.	The government will facilitate the fulfilment of these measures.

Exhumations, identifications and reburials of victims, including tombstones and shrines, carried out with full respect for the cultural and religious values and dignity of the victims and their loved ones.	Victims whose loved one died as a result of a violation, and for whom evidence suggests such measures would be applicable, appropriate and feasible.	The government will arrange for exhumations, reburials and the purchase of tombstones and shrines as recommended by the Commission, or its recommended successor body, and funded by the Trust Fund for Victims.
Memorials, monuments and/or exhibits	A collective reparation measure for either all victims of violations before the TRNUC, or victims of a particular event or type of violation before the TRNUC.	The government will facilitate memorials, monuments and/or exhibits funded by the Trust Fund for Victims.
Restorative justice practices to be developed in consultation with the victims.	Victims who endured harm as a result of a violation against a collective and/or that more traditional forms of reparation might not be able to reconcile, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.
Provision of childcare services during ceremonies.	Victims who would like to participate in TRNUC-related ceremonies (e.g. the unveiling of a memorial or attendance of a restorative justice circle), and who need childcare in order to do so.	The government will facilitate access to childcare in this context, funded by the Trust Fund for Victims.
Investigation into the destruction of secret documents and archives concerning a violation.	Every individual has the right to view his or her own personal file. All relevant documents have been destroyed. For this reason, near-relatives and dependents of the missing or deceased are entitled to an investigation into the destruction of documents and archives pertaining to their case.	The government will facilitate such investigations.

Guarantees of non-repetition, to safeguard against the repetition of the previously violated human right(s). Such guarantees can take the form of, for example, (1) recommending the State to investigate, identify and prosecute perpetrators of the violation(s), so long as they have not received an amnesty from the Commission, (2) strengthening the independence of the courts, (3) reviewing and reforming laws contributing to or permitting the commission of violations, (4) protecting legal, medical, media and human rights defenders, and (5) promoting international human rights standards in public service through training programs.	Victims who endured harm as a result of a violation against a collective and/or that more traditional forms of reparation might not be able to reconcile, and for whom a guarantee of non-repetition might be healing, assuring or otherwise beneficial.	The government will facilitate the planning and execution of guarantees of non-repetition.
Educational Harm *As a result of limited or loss of access to education due to the occurrence of a violation.*		
Measures	***Criteria***	***Provision***
A one-time payment in the form of financial compensation in recognition of a limitation on or loss of access to education due to a violation (*See* "Monetary Reparation Structure" below).	Those victims, and dependents of victims, whose studies were interrupted as a result of the violation.	The amount shall be identical for all victims of the same violation.
Scholarships, pursuant to the following scheme: (1) Full-ride scholarships to secondary, university and/or technical institutions; (2) To both local and overseas institutions according to the victim's preference; (3) To include tuition, fees, transportation costs and a monthly stipend to cover living expenses; (2) On the condition of reconfirmation of the student's enrollment each semester.	Those victims, and dependents of victims, whose studies were interrupted or prevented as a result of the violation.	The government will facilitate access to such financial assistance, funded by the Trust Fund for Victims. Tuition can be paid directly to the institution. Appropriate stipends for living expenses and transportation costs may vary depending on the location of the chosen institution.
Revised primary and secondary history course curricula to educate Seychellois youth on key events relating to the 1977 Coup--informed by key findings of the Commission and consultation with victims--and the facilitation of access to such.	Children, regardless of whether they are dependents of victims of a violation, who qualify for free (primary and secondary) education.	A consortium of curriculum developers, history teachers and key stakeholders in Seychelles shall collaboratively establish curricula for primary and secondary history courses that incorporate key events relating to the 1977 Coup, informed by key findings of the Commission.

Restorative justice practices to be developed in consultation with the victims.	Victims who endured and/or continue to endure suffering as a result of a violation which impaired their access to education, and for whom restorative justice practices might be healing or otherwise beneficial.	The government will facilitate the planning and execution of these restorative justice measures.

2. Monetary Reparation Structure

One-time payments shall be distributed to the complainant(s) who filed a complaint before the Commission.

One-time payments will be capped at up to SCR 20 million for all violations apart from those indicated in the table below. The one-time payment is per violation and not per the number of victims of an alleged violation, although the quantum determined payable for the one-time payment per violation may take into account the number of complainants seeking redress for that violation.

In the scenario that the complainant(s) has died prior to the Commission's, or its successor body's, recommendations for reparation, the one-time payment will be awarded to the complainant(s) heirs, pursuant to the laws of the Seychelles. The aforementioned compensation shall be awarded through the Trust Fund for Victims.

In making any award for monetary compensation, consideration shall be given to any compensation payment already received whether by agreement with Government authorities or via court judgement.

The payment amounts and allowances will be based on the above-listed categories of violations. The TRNUC's hope is that this structure will reflect the gravity of the violations suffered, invoke a sense of common dignity and healing throughout the Seychellois community, be instrumental in embedding a culture of respect for human rights within all organs of the State, and ensure the non-repetition of human rights violations. The table below indicates the maximum payment per violation expressed as an "up to" amount indicating that the amount specified is the maximum that may be awarded for that violation, but the actual amount payable will be determined by reference to the seriousness of the violation and the number of claimants. The structure was informed by consultation with victims and is as follows:

	Violation	**Corresponding one-time payment amoun**
1	Unlawful killing/murder	SCR Up to 20 million

2	Enforced disappearance of persons	SCR Up to 20 million
3	Forced exile	SCR Up to 10 million
4	Torture	SCR Up to 5 million
5	Rape and other acts of a similar nature	SCR Up to 5 million
6	Kidnapping	SCR Up to 5 million
7	Unlawful detention or other deprivation of physical liberty	SCR Up to 3 million + SCR 2,000 per day detention
8	Abuse of office by a Government official, including the executive, judiciary, or legislature	SCR Up to 2 million
9	Wrongful denial of the right to employment	SCR Up to 2 million
10	Wrongful termination of employment	SCR Up to 2 million

11	Unjustified acquisition or loss of property or business as per Annex C below Note: Complainants who accept elements of the Government's new scheme for the return of undeveloped land should qualify for the reparation amount of SCR 1 million, and be compensated at current market value for not only land which is not to be returned to them under the scheme, but also compensated for acquired lands previously sold, used or disposed of by the Government. Compensation values concerning the latter lands may be established by arbitration.	*SCR Up to 1 million + Current market val of the property or business if not recovered already compensated + loss of income if app cable, to be implemented in accordance w the recommendations contained in Annex C Note: The awarding of compensation for the v lation of unjustified acquisition or loss of prc erty or business will not be capped at SCR 20 m lion.
12	Forceful eviction from legally-owned building or land as per Annex C below Note: Victims benefitting from the Government's undeveloped return of land scheme will only qualify for the recommended reparation amount of SCR 1 million and the current market value of any property which is not returned to them under the Government's undeveloped return of land scheme.	*SCR Up to 1 million + Current market val of the property if not already compensated given replacement housing, to be implement in accordance with the recommendations cc tained in Annex C Note: The awarding of compensation for the v lation of forceful eviction from legally-owr building or land will not be capped at SCR million.
13	Other acts of a similar character causing suffering or injury to body, or to mental or physical health	SCR Up to 1 million

*It should be noted that all property, business, and land unreturned under the Government's undeveloped return of land scheme are to be treated under the 'Corresponding one-time payment amount' sections for items 11 and 12 of the Monetary Reparations Structure.

In addition to one-time payments, the Commission, or its recommended successor body, might find certain victims eligible for additional non-monetary reparation and/or financial reparation.

3. Public Apology and Acknowledgement of all Violations Committed

It is recommended that the Government of Seychelles issues a general apology to all victims of human rights violations which can be attributed to the State. This, however, should not imply that the Government is exempt from making case-specific apologies, if and when determined it should do so, in accordance with this Policy.

V. OPERATIONAL MATTERS

- ***Basic premises***

- *TRNUC Reparations Policy Framework*
  - The Reparations Policy Framework constitutes the different options and considerations that the recommended successor body shall apply to the Commission's case determinations when making reparations recommendations to the Government of Seychelles.
- *How will recommendations be made?*
  - The TRNUC recommends the creation of a successor body to make reparations recommendations to the Government of Seychelles, guided by and in accordance with this Policy, which has been informed by consultations with victims. Further, victims have a right to be heard on non-monetary reparations, and the successor body shall inform the victims of this right.
  - This body should be independent from the Government of Seychelles. It should further be established by a legislative act and monitored by the National Assembly to ensure that it has the requisite authority to make recommendations and that the Government adequately implements them in an expeditious manner.
- *Who will implement the individual recommendations and monitor the implementation process?*
  - The Reparations Policy should be made legally enforceable and the recommended successor body's recommendations should be implemented by an office established by the President under Article 62 of the Constitution of the Republic of Seychelles, and monitored by civil society and non-governmental organisations.
  - *See* Annex 'B', which discusses the role and functions of the President's Office.

Trust Fund for Victims

- The Government of Seychelles should establish a Trust Fund for Victims ("TFV") to achieve the Commission's objective to provide "appropriate remedies or reparations".
- Specifically, the TFV's Board should serve to implement the Commission's and recommended successor body's reparation awards by distributing funds allocated by the Seychelles Government, responsible perpetrators, and/or voluntary contributions. The TFV should provide funds for both monetary and non-monetary reparations awards, to support various measures including physical health, psychological health, and education.
- The TFV should be managed by a Board that is independent of the Seychelles Government, and the TFV Statute should be ratified immediately.
- *See* Annex 'A', which provides a proposed TFV Statute.

Exiting the TRNUC

- After rendering all recommendation decisions, and on transferring implementation duties to the office established by the President, the Commission and its recommended successor body shall ensure that (1) victims are informed of the following stages of the reparations process and provided with appropriate contact information, and (2) the office of the President has all necessary records of the TRNUC, and its recommended successor body, required to implement the recommendations.

TRNUC Reparations Policy

31 July 2022

ANNEX 'A'
Proposed Statute of the Trust Fund for Victims

PART I. GENERAL PROVISIONS

Article 1. Establishment of the Trust Fund for Victims

1. The Trust Fund for Victims ("Trust Fund") shall be established in accordance with the terms of the Reparations Policy to achieve the Truth, Reconciliation and National Unity Commission's ("TRNUC" or "Commission") objective to provide "appropriate remedies or reparations" to victims. Pursuant to Section V of the Reparations Policy, the Trust Fund shall serve to implement the Commission's reparation recommendations by distributing funding allocated to the Trust Fund.
2. The Trust Fund shall be a body corporate and act as an independent body from both the Commission and the Seychelles Government.

PART II. MANAGEMENT AND OVERSIGHT OF THE TRUST FUND

Article 2. Governance bodies of the Trust Fund

1. The following bodies are established by this Statute:
    a. a Trust Fund Board which shall establish and review the overall strategy of the Trust Fund.
    b. an Operational Committee which shall be responsible for allocating the Fund's financial resources to victims and for tracking funding.

Article 3. Board of the Trust Fund

1. *Composition of the Board.*

1. A Board shall be established. Members of the Board shall be appointed by the President in total transparency, and according to the criteria of utmost integrity and professionalism. It shall be composed of five (5) members of civil society to avoid making the implementation process overly bureaucratic and to allow for a majority decision on the implementation of reparations.
2. A Chair shall be elected by the Members of the Board. The term of office of the Chair shall be one (1) year and rotational.
3. The Board shall meet whenever necessary, but at least one (1) time per month. The Chair shall determine the agenda for each session.
4. The Manager of the Fund (*see* Article 4) shall be present at meetings of the Board. The Chair may invite other observers to the meetings of the Trust Fund, acting in an observer capacity, in particular when these observers are concerned by the decision adopted.
5. The Members of the Board shall act in an individual capacity on a pro bono basis.
6. A quorum of 3 members shall be required for a meeting to take place.
7. Monthly, quarterly accounts shall be made available and Annual Accounts shall be audited by the Auditor General.

2. *Role and responsibilities of the Board.*

1. The Board shall:
    a. pursuant to Article 2 of this Statute, establish and review the overall strategy of the Trust Fund;
    b. issue guidelines addressed to the Operational Committee of the Trust Fund and take receipt of the monthly financial report;
    c. decide if voluntary donors may contribute to the Trust Fund and determine criteria under which donors may be accepted, in accordance with the regulation of the Trust Fund regarding the selection of donors;
    d. establish contact with potential voluntary donors.
2. Every effort shall be made to reach decisions by consensus. If consensus cannot be reached, all decisions must be approved by an absolute majority of the voting Members of the Board.

Article 4. Management of the Trust Fund

1. An Operational Committee shall be established. It shall be composed of the Manager of the Trust Fund. Depending on the workload of the Trust Fund, a board and/or secretariat can be established in order to manage operational issues, such as tracking funds and supporting the work of the Manager.
2. The Operational Committee of the Trust Fund shall be responsible for:
    a. Carrying out the financial management of the Trust Fund and providing information to the Board regarding financial issues;
    b. Tracking resources allocated through government funding, the Commission's reparation orders and voluntary contributions; and
    c. Preparing and submitting an annual report on the activities financed by the Trust Fund and their implementation.

Article 5. Other Operational Issues

1. A budget line should be dedicated for operational issues in order to ensure the logistical implementation of the Trust Fund.
2. This budget shall be distinguished from the budget dedicated to victims' reparation.
3. Funding may be allocated by supportive donors who are involved in the field of capacity building.

PART III. RECEIPT OF FUNDS

Article 6. Preliminary Consideration

1. Pursuant to Article 1, the Trust Fund's financial resources shall consist of:
    a. Government funding allocated through a dedicated budget line;
    b. Resources collected through fines and/or forfeitures if ordered by the Commission; and/or
    c. Voluntary contributions from governments, international organisations, individuals, corporations and other entities.

Article 7. Government Funding

1. The Trust Fund shall take receipt of money and other properties collected through the Government's yearly dedicated budget. It shall include, *inter alia*:
    a. redistribution of public expenditures. Ministries or any other governmental body can also allocate resources to the Trust Fund through their own budget lines;
    b. reparations;
    c. the transfer of illegally acquired assets of individuals who have benefited from privileged treatment and/or favours because of their cooperation with the Government during the period within the Commission's mandate;
    d. the sale of assets wrongfully acquired by SPUP/SPPF/Parti Lepep (now United Seychelles);
    e. tax(es) on banks or firms which have profited from privileged treatments and/or favours because of their co-operation with the Government during the period within the Commission's mandate; and/or
    f. redistribution of funding from international donors allocated to the Government, such as previous grants allocated by the World Bank, the European Union and the U.N. Development Programme.

Article 8. Resources Collected Through Reparation Orders by the Commission

1. In the situation where the successor body of the Commission is authorized to order any payments to be made through financial contribution of an individual (e.g. a perpetrator), and such recommendation is adopted by the President's implementation office, the Trust Fund shall take receipt of these collected resources and shall separate such resources from the remaining resources of the Trust Fund. It shall note the sources and amounts received, together with any stipulations contained in the order of the Commission as to the use of the funds.
2. If the order is specific in the nature of the reparations and the identities of victims to whom reparations should be made, the role of the Trust Fund is to simply implement the order. The Trust Fund can advise the Commission and/or President's implementation office on the design of the order. If the order takes a general form, the Trust Fund has the discretion in designing an approach for the implementation.

Article 9. Voluntary Contributions

1. Pursuant to Article 3, the Board shall establish contact with governments, international organisations, individuals, corporations and other entities to solicit and accept voluntary contributions to the Trust Fund.
2. The Board shall adopt guidelines on how to solicit financial contributions.
3. The Board shall establish mechanisms that will facilitate the verification of the sources of funds received by the Trust Fund.
4. The Board should refuse voluntary contributions which are not consistent with the goals and activities of the Trust Fund, which would affect the equitable distribution of available funds and property among the different groups of victims.
5. Voluntary contributions may be earmarked by the donor to be used in specific activities or for dedicated awards up to half of the donation, as long as the allocation does not result in discrimination towards beneficiaries of the funds.
6. Voluntary contributions shall be made after signing a 'Certificate of Appreciation for Donation', or if the donor is an international organisation, following the organisations' guidelines. The Certificate shall indicate details which shall be decided by the Board. By sending the Certificate to the Trust Fund, the donor enters into an irrevocable commitment to make available the awards for the Trust Fund.
7. The Board shall refuse voluntary contributions which cannot be legally validated.
8. All voluntary contributions to the TFV shall be made via bank transfer or as otherwise established by the laws of Seychelles and practices of the bank from which the TFV operates.

Article 10. Operational Issues Regarding the Receipt of Funds

1. A bank account shall be opened for the receipt of funds.
2. A computer tracking system shall be established to enable tracking of, *inter alia*:
    a. the source of funds received;
    b. the allocation of compensation, including the amount of funds allocated and the beneficiaries; and
    c. requests and implementation of earmarked contributions.
3. The TFV shall not operate or permit to operate under its name any Bank Credit or Debit Cards.

PART IV. FINAL PROVISIONS

Article 11. Activities and Projects of the Trust Fund

11. The funds shall be distributed in accordance with the Reparations Policy.

Article 12. Entry into Force

12. This Statute shall enter into force immediately after its adoption by the Government of Seychelles

ANNEX 'B'
Role and Functions of the President's Office

The Reparations Policy recommends that the President of Seychelles establish an Implementation Office through presidential declaration and pursuant to Article 62 of the Constitution of Seychelles.

1. *Purpose.*

    a. The Office shall adopt the Commission's, and its successor body's, reparations recommendations in accordance with the Reparations Policy.
    b. The Office shall implement the adopted reparations recommendations in accordance with the Reparations Policy.
    c. The work of the Office shall be monitored by civil society and non-governmental organisations.
    d. Throughout the implementation process, the Office shall –
        i. liaise with stakeholders who will need to help delegate and implement the recommendations; and
        ii. retain records of information gathered.

2. *Standards.*

    a. The Office shall act in accordance with both the Reparations Policy and universally recognised legal principles and human rights norms in carrying out its mandate. This includes carrying out its mandate transparently, equitably, impartially, and with the ultimate goal of promoting reconciliation, healing and social cohesion.

ANNEX 'C'
Context of the violation of "unjustified acquisition or loss of property or business"

The violation of "unjustified acquisition or loss of property or business" has been widely alleged before the Commission and found by the Commission to have occurred in many circumstances. This violation by the Government of Seychelles under Albert René and following Presidents has resulted in severe economic losses for many with generational impacts.

This violation should be viewed as encompassing the totality of forms of unjustified acquisition within the jurisdiction of the Commission, including the Government's unjustified compulsory purchase of private property or business and the Government's unjustified reclassification or rezoning of private land, whether through discriminatory application of the law, corrupt practices, or pursuant to other unlawful or arbitrary means.

In addition to the relevant recommendations delineated in Sections B(1) and B(2) of the Policy, and in light of the remedies contemplated in the Constitution of the Republic of Seychelles, the Commission recommends the following forms of reparation, where appropriate, to victims of this violation:

- Any victim's residual land, if not developed and not used, should be returned to the original owners with immediate effect.
- Any land owned by Government but leased to a third-party should be immediately returned and the lease signed over to the original owner with immediate effect.
- Any land still owned by Government which is earmarked for development should be offered to the original owner to implement that development if so desired or other means identified by which the original owner may benefit from a development on that land whether by way of an allocation of shares in the development or other means.
- For any land which has been already sold by the Government, adequate compensation should be offered in a timely manner. This could be in the form of monetary compensation; returning part of the land if it has been declared, for instance, a country park; or making concessions on or removal of restrictions on the acquired land or on other land which would be to the benefit of the complainant.

ANNEX 'D'
Step-by-Step Guide: Reparations Policy via Case Studies

Below is a step-by-step guide for how to apply the Reparations Policy to a Case Determination. In this guide, we refer to the TRNUC's case determinations concerning various violations.

Please note that the following recommendations for reparation for each respective case are merely examples to assist the Commission, or its successor body, in applying this Policy. The following recommendations for reparation should not be construed as final.

Case No: 001 – Determination on the Complaint of Dorothy Chang Him et-al.

Step 1 – Review Guiding Principles and Standards:

- ☐ Review "III. Guiding Principles and Standards" as the following steps must be carried out in light of them.

Step 2 – Identify Categories of Violations; Categories of Harm

- ☐ Under "IV. Policy Framework", identify which categories of violations are at issue (as laid out in the given Case Determination), and then which categories of harm might apply.
- ☐ Based on findings in the Case Determination of Case No: 001:

Categories of violations	**Categories of harm**	**Victims**
Unlawful Killing (Death of father and brother)	☐ Emotional pain and suffering ☐ Loss of life ☐ Symbolic harm ☐ Identity-based harm	All complainants children and 1 siste
	☐ Educational harm	Complainant Doro Chang-Him
Abuse of Office by a Government Official (Deprived of necessary and promised funds, to which dependent complainants have a legal right)	☐ Material or financial loss ☐ Identity-based harm	All 6 child compla ants
Other acts of a similar character(Bullying, arbitrary arrests, and threats against children by security forces; Removal of cross from decedent's grave; Painting of door in color associated with opposition)	☐ Emotional pain and suffering ☐ Symbolic harm ☐ Identity-based harm	All complainants
Forced Exile (of Dorothy Chang-Him)	☐ Emotional pain and suffering ☐ Symbolic harm ☐ Identity-based harm	Complainant Doro Chang-Him

Step 3 – Identify Reparations Measures to Recommend

☐ **3A. Non-monetary measures (*See* IV(B)(1) – "Detailed Framework Chart")**

- In the Policy's Detailed Framework Chart, locate the measures corresponding to each category of harm you have identified. Then determine which corresponding measures would be most appropriate to recommend, based on the facts of Case No. 001.

Categories of Violations	**Victims**	**Categories of harm**	**Recommended Measures**
Unlawful Killing	All complainants	Emotional pain and suffering	☐ Psychological health services ☐ Restorative justice practices
	All complainants	Loss of life	☐ Investigation into the destruction of secret documents and archives ☐ One-time payment in the form of financial compensation (*See* 3B below)
	All complainants	Symbolic harm	☐ Memorial at the police station where he was sh ☐ Acknowledgement and apology
	All complainants	Identity-based harm	☐ Restorative justice practices
	Complainant Dorothy Chang-Him	Educational harm	☐ Scholarship (if her studies were interrupted as a result of her father's unlawful killing); Conside naming the Reparations Policy's scholarship pr gram after her. ☐ Restorative justice practices (if she endured or continues to endure suffering as a result of her ther's unlawful killing which impaired her acce to education and if such practices would be hea ing or beneficial)

Abuse of Office by a Government Official	All 6 child complainants	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)
	All 6 child complainants	Identity-based harm	☐ Restorative justice practices ☐ Guarantees of non-repetition
Harassment	All complainants	Emotional pain and suffering	☐ Psychological health services ☐ One-time payment in the form of financial compensation (*See* 3B below)
	All complainants	Symbolic harm	☐ Acknowledgment and apology ☐ Tombstone and shrine, carried out with full respect for the cultural values and dignity of the v tims and their loves ones ☐ Investigation into the destruction of secret documents and archives ☐ Guarantees of non-repetition
	All complainants	Identity-based harm	☐ Restorative justice practices
Forced Exile	Complainant Dorothy Chang-Him	Emotional pain and suffering	☐ Psychological health services ☐ One-time payment in the form of financial compensation (*See* 3B below)
	Complainant Dorothy Chang-Him	Symbolic harm	☐ Acknowledgement and apology
	Complainant Dorothy Chang-Him	Identity-based harm	☐ Restorative justice practices

☐ **3B. Compensation (*See* IV(B)(2) – "Monetary Reparation Structure")**

- Pursuant to the Policy's Monetary Reparation Structure, one-time payments should be distributed to the victims in Case No. 001 as follows:

Violation	**Corresponding one-time payment amount**	**Recipients**

Unlawful killing	SCR Up to 20 million	One payment for the violation to be shared between all complainants.
Abuse of Office by a Government Official	SCR Up to 2 million Note: The limit placed on the one-time payment amount is SCR 20 million. Therefore, if this sum is met by the payment received by the complainants for any other violation(s), the complainants will not receive payment for this violation.	One payment for the violation to be shared between all 6 complainants.
Other acts of a similar character	SCR Up to 1 million Note: The limit placed on the one-time payment amount is SCR 20 million. Therefore, if this sum is met by the payment received by the complainants for any other violation(s), the complainants will not receive payment for this violation.	One payment for the violation to be shared between all complainants.
Forced Exile	SCR Up to 10 million Note: The limit placed on the one-time payment amount is SCR 20 million. Therefore, if this sum is met by the payment received by the complainant for any other violation(s), the complainant will not receive payment for this violation.	Dorothy Chang-Him

- **3C. Additional considerations**

  - In finalising your recommendations identified above, there are two further considerations to make:
    1. **Victims' right to be heard** – Victims have a right to be heard on reparations, and the successor body shall inform the victims of this right.
    2. **Fair and equal treatment** – Ensuring similar recommendations are made to similarly-situated victims.

* * *

Case No: 002 – Determination on the Complaint of Lewis Betsy

Step 1 – Review Guiding Principles and Standards:

- ☐ Review "III. Guiding Principles and Standards" as the following steps must be carried out in light of them.

Step 2 – Identify Categories of Violations; Categories of Harm

- ☐ Under "IV. Policy Framework", identify which categories of violations are at issue (as laid out in the given Case Determination), and then which categories of harm might apply.
- ☐ Based on findings in the Case Determination of Case No: 002:

Categories of Violations	**Categories of harm**
Unlawful detention or other deprivation of physical liberty	☐ Emotional pain and suffering ☐ Symbolic harm ☐ Identity-based harm
Wrongful termination of employment	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm
Wrongful denial of the right to employment	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm
Forced Exile	☐ Emotional pain and suffering ☐ Symbolic harm ☐ Identity-based harm
Unjustified acquisition or loss of property or business	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm

Step 3 – Identify Reparations Measures to Recommend

- ☐ **3A. Non-monetary measures (*See* IV(B)(1) – "Detailed Framework Chart")**
  - In the Policy's Detailed Framework Chart, locate the measures corresponding to each category of harm you have identified. Then determine which corresponding measures would be most appropriate to recommend based on the facts of Case No. 002.

Categories of Violations	**Categories of harm**	**Recommended Measures**

Unlawful detention or other deprivation of physical liberty	Emotional pain and suffering	☐ Psychological health services ☐ Restorative justice practices ☐ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	☐ Apology and public acknowledgement ☐ Clearing of victim's name ☐ Investigation into the destruction of secret documents and archives ☐ Guarantees of non-repetition
	Identity-based harm	☐ Restorative justice practices
Wrongful termination of employment	Emotional pain and suffering	☐ Psychological health services
	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	☐ Apology and public acknowledgement ☐ Restorative justice practices
	Identity-based harm	☐ Guarantees of non-repetition
Wrongful denial of the right to employment	Emotional pain and suffering	☐ Psychological health services ☐ Restorative justice practices
	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)
	Identity-based harm	☐ Guarantees of non-repetition
	Symbolic harm	☐ Apology and public acknowledgement

Forced Exile	Emotional pain and suffering	☐ Psychological health services ☐ Restorative justice practices ☐ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	☐ Acknowledgment and apology ☐ Investigation into the destruction of secret documents and archives ☐ Guarantees of non-repetition
	Identity-based harm	☐ Restorative justice practices
Unjustified acquisition or loss of property or business	Emotional pain and suffering	☐ Psychological health services
	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	☐ Apology and acknowledgement
	Identity-based harm	☐ Restorative justice practices

☐ **3B. Compensation (*See* IV(B)(2) – "Monetary Reparation Structure")**

- Pursuant to the Policy's Monetary Reparation Structure, one-time payments should be distributed to the victim in Case No. 002 as follows:

Violation	**Corresponding one-time payment amount**
Unlawful detention or other deprivation of physical liberty	SCR Up to 3 million + SCR 2,000 per day of detention
Wrongful termination of employment	SCR Up to 2 million
Wrongful denial of the right to employment	SCR Up to 2 million

Forced Exile	SCR Up to 10 million
Unjustified acquisition or loss of property or business	SCR 1 million + current market value of the property not returned under re-turn of land scheme

- **3C. Additional considerations**

  - In finalising your recommendations identified above, there are two further considerations to make:
    1. **Victims' right to be heard** – Victims have a right to be heard on reparations, and the successor body shall inform the victims of this right.
    2. **Fair and equal treatment** – Ensuring similar recommendations are made to similarly situated victims.

* * *

Case No: 039 – Determination on the Complaint of Luc Chang-Ko

Step 1 – Review Guiding Principles and Standards:

- ☐ Review "III. Guiding Principles and Standards" as the following steps must be carried out in light of them.

Step 2 – Identify Categories of Violations; Categories of Harm

- ☐ Under "IV. Policy Framework", identify which categories of violations are at issue (as laid out in the given Case Determination), and then which categories of harm might apply.
- ☐ Based on findings in the Case Determination of Case No: 039:

Categories of Violations	**Categories of harm**
Wrongful termination of employment	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm
Wrongful denial of the right to employment	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm

Step 3 – Identify Reparations Measures to Recommend

- ☐ **3A. Non-monetary measures (*See* IV(B)(1) – "Detailed Framework Chart")**
  - In the Policy's Detailed Framework Chart, locate the measures corresponding to each category of harm you have identified. Then determine which corresponding measures would be most appropriate to recommend based on the facts of Case No. 039.

Categories of Violations	**Categories of harm**	**Recommended Measures**
Wrongful termination of employment	Emotional pain and suffering	☐ Psychological health services
	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	☐ Apology and public acknowledgement ☐ Restorative justice practices ☐ Investigation into the destruction of secret documents and archives

	Identity-based harm	□ Restorative justice practices
Wrongful denial of the right to employment	Emotional pain and suffering	□ Psychological health services □ Restorative justice practices
	Material or financial loss	□ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	□ Apology and public acknowledgement
	Identity-based harm	□ Restorative justice practices

□ **3B. Compensation (*See* IV(B)(2) – "Monetary Reparation Structure")**

- Pursuant to the Policy's Monetary Reparation Structure, one-time payments should be distributed to the victim in Case No. 039 as follows:

Violation	**Corresponding one-time payment amount**
Wrongful termination of employment	SCR Up to 2 million
Wrongful denial of the right to employment	SCR Up to 2 million

□ **3C. Additional considerations**

- In finalising your recommendations identified above, there are two further considerations to make:
  1. **Victims' right to be heard –** Victims have a right to be heard on non-monetary reparations, and the successor body shall inform the victims of this right.

2. **Fair and equal treatment** – Ensuring similar recommendations are made to similarly situated victims.

* * *

Case No: 077 – Determination on the Complaint of Antoine Lau-Tee

Step 1 – Review Guiding Principles and Standards:

- ☐ Review "III. Guiding Principles and Standards" as the following steps must be carried out in light of them.

Step 2 – Identify Categories of Violations; Categories of Harm

- ☐ Under "IV. Policy Framework", identify which categories of violations are at issue (as laid out in the given Case Determination), and then which categories of harm might apply.
- ☐ Based on findings in the Case Determination of Case No: 077:

Categories of Violations	**Categories of harm**
Wrongful termination of employment	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm
Wrongful denial of the right to employment	☐ Emotional pain and suffering ☐ Material or financial loss ☐ Symbolic harm ☐ Identity-based harm
Forced Exile	☐ Emotional pain and suffering ☐ Symbolic harm ☐ Identity-based harm

Step 3 – Identify Reparations Measures to Recommend

- ☐ **3A. Non-monetary measures (*See* IV(B)(1) – "Detailed Framework Chart")**
  - In the Policy's Detailed Framework Chart, locate the measures corresponding to each category of harm you have identified. Then determine which corresponding measures would be most appropriate to recommend based on the facts of Case No. 077.

Categories of Violations	**Categories of harm**	**Recommended Measures**
Wrongful termination of employment	Emotional pain and suffering	☐ Psychological health services
	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)

	Symbolic harm	☐ Apology and public acknowledgement ☐ Restorative justice practices
	Identity-based harm	☐ Restorative justice practices
Wrongful denial of the right to employment	Emotional pain and suffering	☐ Psychological health services ☐ Restorative justice practices
	Material or financial loss	☐ One-time payment in the form of financial compensation (*See* 3B below)
	Symbolic harm	☐ Apology and public acknowledgement
	Identity-based harm	☐ Restorative justice practices
Forced Exile	Emotional pain and suffering	☐ Psychological health services ☐ Restorative justice practices ☐ One-time payment in the form of financial compensation (*See* 3A above)
	Symbolic harm	☐ Acknowledgment and apology ☐ Investigation into the destruction of secret documen and archives ☐ Guarantees of non-repetition
	Identity-based harm	☐ Restorative justice practices ☐ Guarantees of non-repetition

☐ **3B. Compensation (*See* IV(B)(2) – "Monetary Reparation Structure")**

- Pursuant to the Policy's Monetary Reparation Structure, one-time payments should be distributed to the victim in Case No. 077 as follows:

Violation	**Corresponding one-time payment amount**

Wrongful termination of employment	SCR Up to 2 million
Wrongful denial of the right to employment	SCR Up to 2 million
Forced Exile	SCR Up to 10 million

- **3C. Additional considerations**
  - In finalising your recommendations identified above, there are two further considerations to make:
    1. **Victims' right to be heard** – Victims have a right to be heard on non-monetary reparations, and the successor body shall inform the victims of this right.
    2. **Fair and equal treatment** – Ensuring similar recommendations are made to similarly situated victims.