

## **The Truth, Reconciliation and National Unity Commission update and reflections on the road ahead.**

### **By the Commissioners**

#### Operationalising the Commission

On 27 June 2019, the last two national members of the Truth, Reconciliation and National Unity Commission, Archbishop James Wong Yin Song and Mrs. Marie-May Leon were sworn in as Commissioners before the President Danny Faure at a ceremony held at Statehouse. The other national members of the Commission, J.P Michael Green (Vice-Chairperson) Dr. Marie-Therese Purvis and Mr. Jacques Kouï Gbilimou, along with foreign members Mr. Pierre Rosario Domingue and Gabrielle Louise McIntyre were previously sworn in on 9 May 2019.

On 9 August 2019, the Commission is due to commence its formal mandate and since the swearing of the first Commissioners' it has been working hard to ensure that it will be operational at that time. This work has not been without its challenges.

Without any dedicated staff at this time, the Commissioners have had to take on all of the administrative tasks necessary to establish the Commission as a functioning organization. This has included preparation of the budget, identification of staffing needs, drafting of job descriptions, advertising positions, conducting interviews, drafting staff contracts, sourcing furniture and computer equipment for its premises,

organizing for the designing of its website, organizing the phone and computer lines, organizing for signage and the Commission's logo and numerous other important tasks to establish a functional Commission.

Administrative challenges aside, during the preparatory period the Commission has also faced legal challenges. It was named as the third respondent in a petition filed before the Constitutional Court by Ms. Alexi Amesbury, who seeks to challenge, inter alia, the lawfulness and constitutionality of the appointment of a foreigner as Chairperson. Of importance to the Commission, and the basis of its being named as a respondent, is the order sought before the Court by the petitioner to prevent the Commission from hearing any cases lodged before it prior to the determination of the petition. The matter remains pending before the Constitutional Court.

### The Mandate and Objectives of the Commission

Despite the above challenges, since the swearing of its first Commissioners, the Commission has given constant consideration to the substance of its work, its mandate, its objectives and how these will be effectively and efficiently achieved.

Under the Truth, Reconciliation and National Unity Act 2018 establishing the Commission, the Commission is mandated to investigate all human rights abuses committed during, or in relation to, the Coup D'état of 5 June 1977. Such violations include, for example, unlawful killing, enforced disappearance, unjustified acquisition or loss of property or business, forced exile, unlawful imprisonment or other deprivation of physical

liberty and abuse of office by a Government official. The Commission is mandated to receive complaints in respect of any alleged violations, to gather, collate and analyze information and evidence with respect thereto, and to make decisions.

The objectives of the Commission are ambitious. Through its investigation of complaints the Commission seeks to ascertain the truth with respect to complaints of alleged violations; create an accurate and objective public record of the complaints; help bridge divisions caused by any violations; provide closure for the victims and perpetrators of the violations; determine the appropriate reparations for victims; the appropriate rehabilitation for victims and perpetrators and whether or not to grant amnesty to perpetrators. Ultimately, the Commission aims to unite the people of the Seychelles around a common agenda that will help them move forward in confidence and with a sense of common purpose and ensure that human rights violations do not recur.

The Commission is acutely aware that its task is not an easy one, that the matters it is mandated to address are both sensitive and complicated, and that in seeking to heal old wounds it will undoubtedly open them. It is also acutely aware that its mandate will not be discharged nor its objectives met without the full support of the people of the Seychelles and importantly its national leaders. Thus, as part of its preparatory strategy towards achieving its objectives it has reached out to national political, religious, civil and media leaders to seek their

support for its work and to underscore the important role they play in the success of the Commission's work. Going forward the Commission hopes to have the support of all these individuals who it considers bear the primary responsibility for leading the people of the Seychelles towards unity.

The Commission considers it important to the efficient achievement of its objectives, for there to be consistency in approach between different organisations dealing with the same or similar matters. The Commission has therefore scheduled meetings with other bodies and Commissions in the Seychelles, to identify potential overlaps in mandates and opportunities for cooperation. The Commission is currently preparing memorandum of understandings with a number of organizations, including the Anti-Corruption Commission and the Lands Tribunal, to facilitate cooperation and the sharing of information between them.

In addition, the Commission is reaching out to members of the diplomatic community to explain the mandate of the Commission and to ensure understanding of the importance of its work to the people of the Seychelles. In addition to individual meetings the Commission plans to hold a diplomatic briefing for Ambassadors, High Commissioners and international and regional organizations in the Seychelles, prior to its formal start of mandate. Through building these connections and relationships the Commission hopes to secure the support of the broader international community for the achievement of its objectives.

Bringing of complaints before the Commission

As set out above, the mandate of the Commission is to investigate complaints of human rights abuses related to the Coup D'état of 1977. The authority of the Commission to investigate any such alleged violations during that period relies on a complaint being brought before it. In this regard, the Commission considers it important to emphasise that from the start of its mandate on 9 August 2019, complainants have six months in which to bring a complaint to the Commission.

The Commission also considers it important to emphasize that those persons who have brought their complaints before the National Assembly Truth and Reconciliation Committee will need to inform the Commission that they wish it to take up their complaint. While the Commission will receive all the files of the National Committee it will only investigate a complaint there made upon the advice of the complainant that they wish the Commission to do so.

The Commission is very sensitive to the impact that talking about past events may have on complainants and witnesses. While the preference in the Act is for open and transparent meetings and hearings so that the public is informed of violations suffered, the needs of the complainant will be paramount in the Commission's determination as to whether to make proceedings public. Where necessary, the Commission may take measures to protect complainants from retaliation for the bringing of a complaint and will provide any other necessary support to a complainant to ensure their well-being and to make their engagement with the Commission a positive experience. The Commission is also recruiting experienced

counsellors and engaging with SIFCO as part of its strategy to ensuring appropriate support for complainants, witnesses and perpetrators during and after their engagement with the Commission.

### Identification of perpetrators

Under the Act the Commission is mandated to determine who bears responsibility for complaints of violations brought before it and to classify that person(s) as a perpetrator. As the Commission is not concerned with criminal prosecutions the Commission need only be satisfied that it is more likely than not that a person committed a violation. The standard is one of a balance of probabilities and not the criminal standard of beyond reasonable doubt.

The Commission is aware of the reputational damage that can be caused to a person named as a perpetrator of human rights violations and there are many provisions in the Rules of Procedure and Evidence to ensure that the due process rights of persons accused of committing violations are fully respected. Most importantly, is the right to be heard in relation to any allegation of violations made prior to the public disclosure of that allegation. It is only in certain circumstances, where the right of reply is waived or the allegation is already in the public domain without challenge, that the Commission will allow proceedings to continue without the input of that perpetrator.

### Provision and determination of amnesty

As the objectives of the Commission include ascertaining the truth, to create an accurate and objective record of violations,

and to unite the people of Seychelles around a common agenda that will help them move forward in confidence and with a sense of common purpose, the Act provides for the granting of amnesty to perpetrators, from prosecution, as a means of encouraging those persons to come forward and to tell the truth about the violations alleged against them.

The Commission is aware that the grant of amnesty to a perpetrator of human rights violations is a particularly sensitive matter and an approach that may not be supported by all Seychellois. In that regard, the Commission will be sensitive to the need to explain fully any decision to grant amnesty and the views of the direct victim of violations or their family members will be given due consideration in any determination of amnesty. In essence, the grant of amnesty is the price the people of the Seychelles are asked to pay to finally have the truth and hopefully there-after, closure. In this respect, the Commission appreciates that victims are being asked to put the interest of the Seychelles as a nation before their sense of personal grievance – a difficult ask.

The Rules of Procedure and Evidence grant a perpetrator 24 months from the start of the Commissions mandate in which to petition for amnesty and a perpetrator can come forward prior to or after being named by a complainant. The Commission is hopeful that perpetrators do come forward, prior to being named, and that they embrace the opportunity being given to them to provide closure to victims and to contribute to the ability of the Seychelles nation to move forward as one people. In this regard, perpetrators must be willing to put their

interests aside and to embrace the broader interests of the Seychelles community by taking responsibility for the harms that they have caused.

To qualify for a grant of amnesty a perpetrator must provide a full and frank disclosure of his or her responsibility for violations and provide a sincere apology to victims for those violations. Where the Commission is satisfied that a perpetrator has given a full and frank account, and that the apology is sincere, it shall grant that person an amnesty for the violations disclosed. The Commission's determination that an amnesty should be granted does not impact on any decision of the Commission to order reparations or remedies for victims, or rehabilitative measures for a victim and or the perpetrator.

Where the Commission is not satisfied that an amnesty should be granted it may refer the matter to the prosecutorial authorities. However, none of the evidence received before the Commission in relation to that perpetrator will be admissible in any civil or criminal prosecution against that perpetrator.

An amnesty hearing may be conducted in private if, after consulting with the parties concerned, the Commission is of the opinion that (a) it is in the interests of justice; (b) there is a likelihood that harm may ensue to any person; or (c) reconciliation between the parties may not be achieved by the proceedings being conducted in public.

To balance the grant of amnesty to the perpetrator with the suffering caused to the victim the Commission may order that perpetrator provide direct compensation to the victim. Where that perpetrator is deceased, the Commission may make a

compensation order against the family of the deceased perpetrator if the family has benefited from assets of the perpetrator that the Commission determines are closely related to the violation incurred by the victim. In addition, where it considers appropriate, the Commission may order rehabilitative measures for both perpetrators and victims. The aim of any such order is to bring closure to both parties and to restore their place in society.

In other circumstances, the Commission is mandated to make recommendations with respect to appropriate reparations, remedies and rehabilitative measures for victims and perpetrators to the President.

The Commission has given considerable thought to how compensation to victims should be determined when that compensation is to be recommended as payable by the State. The Commission is aware that of the 315 complaints filed before the National Assembly Truth and Reconciliation Committee, 58% were seeking compensation, and that its recommendations will place a burden upon the tax payer in the Seychelles. While the Commission will consider each case on its merits and ensure fairness to the victim, it will also take account of what is a reasonable burden to be placed upon the tax payer in all the circumstances before it. The Commission may also recommend community-based reparations, including the establishment of places of memorial as a means of permanently acknowledging the suffering of victims and paying tribute to them.

### Powers of the Commission

To facilitate the implementation of its mandate the Commission is granted the same powers as the Supreme Court of the Seychelles. For example, the Commission has the power to summons any person it wishes to hear and to compel their testimony, it has the power to enter any property and seize evidence from that property and, regardless of any other law of the Seychelles, it has the power to access any public or private archive and to make copies of relevant documents. Failure to cooperate with the Commission, other than in assertion of the right against self-incrimination, may render a person liable to the sanctions set out in Section 13 of the Act, which include a term of imprisonment of ten years.

The granting of these extensive powers to the Commission allows it to carry out its investigations in an independent manner but also places a responsibility on the Commission to ensure that in the exercise of these power it abides by international human right standards. To ensure that it does so, and for the purpose of transparency in investigations, the Commission's Rules of Procedure and Evidence set out in detail when and how the Commission may exercise its powers and include provisions which allow their exercise to be challenged as unjustified or unlawful.

### Conclusions

The Commission is fully committed to the discharge of its mandate and to achieving the objectives of its establishing Act. However, the Commission can only do so much and the success of the Commission depends on the engagement of the people of the Seychelles – complainants, perpetrators and witnesses

and the support of all national leaders in the Seychelles. The Commission undertakes to ensure that in the carrying out of its activities it proves itself to be a body worthy of support. In that regard, it commits to ensuring that the rights and dignity of all people that come before it will be fully respected in conformity with the highest human rights standards and that its work will be carried out with transparency and accountability. The Commission welcomes all Seychellois to follow its work and to contribute whatever they can to the Commission's success and ultimately the success of the Seychellois as one people moving forward with confidence in the future in a society where the conditions are such that no such violations will recur.