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Case No: 111

The Truth, Reconciliation and National Unity Commission

In the Complaint of Jimmy Tirant

31 December 2022

Determination on the Complaint of Jimmy Tirant

Complainant:

Jimmy Tirant

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

OBSERVING that the complaint of Mr. Tirant, who brings his complaint as a victim, was filed on 15 November, in conformity with Sections 3(4) and 3(5) of the Truth Reconciliation and National Unity Act, 2018 ("TRNUC Act");

NOTING that pursuant to Section 2(8) of the TRNUC Act, the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977,[1] and that the complainant alleged kidnapping,[2] torture,[3] and unlawful imprisonment or other deprivation of physical liberty,[4] in 1999 by military authorities, a time period that falls outside the primary temporal mandate of the Commission but nonetheless falls within the Commission's thematic mandate as the Commission finds that the violations alleged were committed by Government authorities fully aligned to the protection of the Government and party that had taken power with the Coup d'état of 1977, and indicative of a continued pattern of human rights violations that were committed during the one-party State, and are admissible on that basis;

RECALLING that pursuant to Rule 25 of the Rules of Procedure and Evidence of the Commission, the test for admissibility is low but a "complaint will be deemed inadmissible where the information contained

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

[2] TRNUC Act, sec. 2(8)(f). The Commission notes that the violation of kidnapping constitutes the following elements: (1) the taking of a person through force or fraud (2) by means of a deprivation of liberty without consent (3) for the purpose of (a) removing a person from Seychelles, (b) removing the person from guardianship, or (c) otherwise done with malicious intent, (4) by a perpetrator. The Commission has found that the violation of kidnapping impacts a victim's rights to liberty, security of person, and recognition before the law, as well as other due process rights, and may amount to an arbitrary arrest and/or detention in breach of Article 9 of the UDHR. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217 (III), 10 December 1948, art. 9 (freedom from arbitrary arrest, detention, or exile). *See also* Chapter XXV – Offences Against Liberty of the Seychelles Penal Code (1955), which lays out the offences that amount to a kidnapping.

[3] TRNUC Act, sec. 2(8)(c). The Commission considers the violation of torture as (1) the intentional infliction (2) of severe pain and suffering (3) in a cruel, inhuman, and degrading manner (4) by a perpetrator. The Commission notes that in the Declaration on the Protection of All Persons from Being Subjected to Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly, the consensus definition of torture requires the act of torture to be "intentionally inflicted... for such purposes as obtaining from him or a third person information or a confession". U.N. General Assembly, *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 1, 9 December 1975, U.N. Doc. A/RES/3452(XXX). *See* UDHR art. 5 (freedom from torture).

[4] TRNUC Act, sec. 2(8)(b). The Commission considers that the violation of unlawful imprisonment or other deprivation of physical liberty consists of 1) an arrest, detention, imprisonment, or other deprivation of one's physical liberty 2) executed unlawfully, arbitrarily, or without due process 3) by a perpetrator. The Commission notes that the term "detention" corresponds to the state of being under police or State custody for any amount of time, whereas "imprisonment" references being detained specifically as the result of a conviction. Hence, the "detention" prong falls into the broader "other deprivation of physical liberty" provision of Section 2(8)(b) of the TRNUC Act. This violation stems from a violation of the fundamental rights to personal liberty and to due process of law, among others, which are at the status of customary international law. *See* UDHR, arts. 3 (right to liberty and security of person), 7 (equal protection of the law), 9 (freedom from arbitrary arrest, detention, or exile), 10 (right to fair and public hearing by impartial tribunal).

within the complaint falls manifestly outside the mandate of the Commission", and in this case the Commission rendered the complaint of Mr. Tirant prima facie admissible on 26 May 2020;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard the complaint of Mr. Tirant on 18 May 2021,[5] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

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

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

1. The Commission recalls the evidence of Mr. Tirant that in 1999, military authorities arrived at his home but did not find him there, and as a result of their visit, Mr. Tirant went to see his lawyer and then presented himself at the police station with his lawyer, where he was advised that he was not wanted by the police after all; the police then called the military authorities, who informed him that they did not need Mr. Tirant either, but instead were looking for "the terrorist that lived in the forest";

2. The Commission recalls that Mr. Tirant was then advised by the police to return at 1.00 P.M. which he did with his mother. Mr. Tirant stated that when his mother went up to the police reception, he was taken into another room, and his mother was not informed of his whereabouts; further, when his wife attended at the police station looking for him, she was not informed that he was there;

3. The Commission recalls Mr. Tirant's evidence that at 9.15 P.M., he was asked by the police to sign a release form, which he eventually signed, and then went to leave the police station. As he was leaving, a vehicle came and blocked the doorway, and four soldiers alighted from the vehicle and placed Mr. Tirant inside of it; Mr. Tirant identified one of those soldiers as Jeffrey Marie; Mr. Tirant had been a member of the army;

4. The Commission recalls the evidence of Mr. Tirant that he was taken by the soldiers to the reclaimed land at Providence and told to jump in the sea and then go home; he was taunted by the soldiers in this command, and they were placing their pistols against his head as they did so;

5. The Commission recalls that Mr. Tirant claimed that they then transported him to English River, near Radio Seychelles, and told him to get out of the car and go home; then they took him to Bel Eau Army Camp, and then at around 5.30 A.M., they took him to Grande Police;

6. The Commission recalls Mr. Tirant's evidence that he was placed in a cell at Grande Police and was left there for some time, and then on the Saturday, at around 6.00 PM. Sergeant Major Mirabeau asked for him, so he was taken by Corporal Julie to Sgt. Major Mirabeau;

7. The Commission recalls that Mr. Tirant alleged that he was placed in handcuffs, and that Sgt. Major Mirabeau took his hands and attached him to an electricity pole in the middle of the cells compound, and took a piece of steel and placed in the handcuffs so they pressed his hands; they then took the handcuffs off, threw a rope over a branch of the avocado tree, tied Mr. Tirant in that tree, and the soldiers were ordered to pull him up and down with the ropes three to four times; they then tied his

[5] Hearing No. 155, Tuesday, 18 May 2021.

feet, and Sergeant Mirabeau hit him with a polythene pipe three times on his feet and then ordered the soldiers to "finish it";

8. Mr. Tirant further claimed that Danny Nourrice picked up some old underwear from the ground and placed it on his head and took a "serpan karoutsou" (a curly strip of rubber) and put it in his mouth as the soldiers continued to hit him under his feet; Mr. Tirant claimed that as he was being beaten, Sgt. Major Mirabeau forced him to say "yes", that he had constructed "bonm beton" and furnished bullets in the forest;

9. Mr. Tirant claimed that Mr. Robert Ernesta witnessed his mistreatment;

10. Mr. Tirant claimed that at 6.45 PM., they hung him up for 15 minutes, and when they let him down, they forced him to walk over macadam, rocks like gravel; his feet were so swollen that he could not walk, and he had to crawl to his cell;

11. Mr. Tirant claimed that he was held at Grande Police from Saturday until the following Monday, at which point he was released; the Commission recalls that Mr. Tirant identified Mr. Danny Laira as a witness to his detention and mistreatment at Grande Police, as he claimed that Mr. Laira shared a cell with him while there;

12. Mr. Tirant stated that after his release, he went for medical treatment, and underwent physiotherapy for one year;

13. The Commission recalls that Danny Laira was called to give evidence before it[6], and he stated that it was on a Friday in 1992 that he, Mr. Tirant, and another two soldiers were asked to report to a place called '316' at 3.30 P.M., from Bel Eau Headquarters. Mr. Laira claimed that when they reported, there were a lot of officers present, including Leopold Payet, and they were told by their platoon commander to go to their lockers and remove all their military possessions and return them; when they questioned the order, they were instructed to obey, and when they refused they were told to go in the military cell at Bel Eau;

14. Mr. Laira claimed that a vehicle came and they were placed in handcuffs and taken to Central Police Station, where they were kept in the corridor, and when the transport came, they were ordered to open the door; when they refused, a smoke bomb was thrown at them to force them to open the door; they were then placed in the vehicle and taken to Grande Police, where they arrived at around 6.00 P.M;

15. Mr. Laira recalled that upon their arrival, they were handed over to MacDonald Marengo, who was the Commanding Officer of Grande Police, and they were placed in cells where they stayed until Monday, at which point they were again taken in a vehicle, and this time they were taken to Pointe Larue Camp;

16. Mr. Laira claimed that he, Mr. Tirant, and the two other soldiers were arrested again a week after the elections and placed in cells at Bel Eau, from which they escaped, but they were later caught at Cascade;

17. Mr. Laira further recalled being arrested again in 1998 and taken to Grande Police, where he was questioned about guns; he claimed that Mr. Tirant's sister had told him that Mr. Tirant was arrested

[6] Hearing No. 223, Tuesday, 9 November 2021.

the day after he was released, and that Mr. Tirant was kept there for two days; however, he did not corroborate Mr. Tirant's claim concerning his treatment at Grande Police, or the claim that he had shared a cell with Mr. Tirant at that time;

18. The Commission recalls that it called Mr. Jeffrey Marie to answer the allegations made by Mr. Tirant against him.[7] Mr. Marie informed the Commission that he was asked to take Mr. Tirant from Bel Ombre, but that his family informed him that he had been arrested and was at Central Police Station; Mr. Marie then called Central Police Station and was informed that Mr. Tirant was going to be released, so he went to pick him up to take him to Grande Police;

19. Mr. Marie stated that he might have gone to Providence to collect other people that were going to Grande Police; he could not recall, however, because he said he was arresting bandits all the time and Mr. Tirant was a bandit; Mr. Marie recalled one incident where Mr. Tirant allegedly stole the sick leave book of an army doctor, Dr. Ramados, and was issuing sick leave notes to the soldiers;

20. Mr. Marie recalled that Mr. Robert Ernesta would call him and ask him how they could catch a certain person, and Mr. Marie would try and find out where the person was and then Mr. Ernesta would send soldiers; Mr. Marie recalled that he regularly operated in civilian clothes, and that he was in plainclothes with a pistol when he arrested Mr. Tirant;

21. Mr. Marie stated that he may have taken Mr. Tirant to English River and harassed him, and he may have violated his rights, but claimed that it was only "light harassment";

22. Mr. Marie further stated that he did not recall having ever been involved in beating anyone, but he confirmed that a lot of people were beaten by the soldiers;

23. Mr. Marie further advised the Commission that when he was told to arrest someone, he had no choice but to obey the orders of his Commanders; he noted that on most occasions when they carried out operations to arrest people, there would be two soldiers and two police officers, as they were meant to be helping the police arrest people;

24. The Commission recalls that it served a suspect notification on Leopold Payet, who held the position of Chief of Staff in the Seychelles Peoples Defence Forces (SPDF) at the time of the events in question;

25. The Commission recalls that Mr. Payet responded through a statement that he was the Chief of Staff of the SPDF in 1998; that all the officers and enlisted men and women of the SPDF are guided in the execution of their duties, tasks, and responsibilities provided by the Defence Forces Act, 1980; that at no point did Mr. Payet order any officer and/or men and women under his command to physically abuse and/or torture any detainees or violate their human rights, and that Mr. Payet "categorically reject[ed] any attempt to ascribe such unlawful actions to [him]";

26. The Commission notes that in response to the suspect notification served on him, Francis Mirabeau stated, with respect to the events alleged to have occurred in 1998, as follows:

> I recalled during the year 1993 a suspicious cargo boat "MALO" was stopped by the Coast Guard and the boat was found loaded with arms and ammunitions. The boat was brought to Port Victoria and all the arms and ammunitions were kept under the supervision of SPDF as ordered by the court. All arms/ammunitions were unloaded and brought to the armoury at Gran Polis, Ex – Pte Jimmy

[7] Hearing No. 222, Monday, 8 November 2021.

> Tirant was threatening the residents of Bel Ombre with a weapon. Tirant was questioned by SPDF authority on this issue and a searched (sic) conducted as (sic) his mother's residence at Bel Ombre where an AK47 assault rifle and a pistol plus magazine of ammunitions was found. He was arrested and brought to Gran Polis. If he was beaten there I cannot say as I was not there, my duty was to transport him to Gran Polis only. I believed he was later released from SPDF. I denied all the accusations made by Tirant against me as he Tirant should also inform the commission that he was some sort of team leader among a group of hooligans terrorising members of the public at Bel Ombre;

27. The Commission notes that Mr. Mirabeau did not address the allegations made by Mr. Tirant;

28. The Commission also notes the response of Mr. Robert Ernesta to the suspect notification served on him, which was as follows: "I sincerely believe his story was fabricated. We are good friends and he has never spoken to me about the issue";

29. The Commission accessed Mr. Tirant's army file, which established that he was released from the SPDF with effect from 17 September 1993 for being found unsuitable for further military service;

30. The Commission notes that a memo on file, dated 10 October 1993, reported that Mr. Tirant had been AWOL since 17 September 1993;

31. The army file also recorded that Mr. Tirant was sentenced to detention at Grande Police "until further notice due to involvement of arms and ammunitions";

32. The Commission recalls the evidence of Mr. Leopold Payet that he could not recall why Mr. Tirant, amongst other soldiers, was detained in Grande Police in 1993, but he said it could be either because they did not give back their weapons and ammunition, which were issued to them by the army, or that they were suspected of being involved in "transacting" the "Malo" arms and ammunitions;

33. The Commission finds based on the evidence of Mr. Marie that Mr. Tirant was detained in 1998 by members of the SPDF, who took him from the police station following his release upon the orders of his superiors, and transported by Mr. Marie to Grande Police, constituting the violation of kidnapping under Section 2(8)(f), as there was no lawful reason for taking Mr. Tirant, As the soldiers' taking of Mr. Tirant was evidently forcible, with malicious intent due to the lack of provocation or any situation meriting such conduct, and he was detained without his consent;

34. The Commission finds that the identification of the perpetrators responsible for Mr. Tirant's beating has not been corroborated, and in particular it was not corroborated by Mr. Laira, the witness Mr. Tirant had identified as able to do so, although Mr. Laira did claim to have heard of Mr. Tirant's detention;

35. The Commission nonetheless finds, based on the pattern of evidence it heard with respect to the treatment of persons taken to Grande Police, that Mr. Tirant was beaten by members of the SPDF, treatment which it deems sufficient to fulfil the requirements of the violation of other acts of a similar character causing suffering, or injury to body or to mental or physical health pursuant to Section 2(8)(m) of the TRNUC;

36. Further, the Commission finds that the evidence satisfies the required elements of unlawful imprisonment or other deprivation of physical liberty pursuant to Section 2(8)(b) of the TRNUC Act;

37. While the Commission has not been able to identify the specific SPDF perpetrators responsible for these violations, it finds that the unidentified SPDF members in question were exercising elements of State authority in the commission of the violations of Mr. Tirant's rights, the SPDF being a core organ of the State, and thus that the State bears responsibility for the human rights violations Mr. Tirant suffered;

38. Therefore, the Commission determines on the evidence adduced that Mr. Tirant suffered the following violations: kidnapping pursuant to Section 2(8)(f) of the TRNUC Act, unlawful imprisonment or other deprivation of physical liberty pursuant to Section 2(8)(b) of the TRNUC Act, and other acts of a similar character pursuant to Section 2(8)(m) of the TRNUC;

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

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

Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 111.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson G. McIntyre

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner