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Case No: 121

The Truth, Reconciliation and National Unity Commission

In the Complaint of Eileen Michaud

31 December 2022

Determination on the Complaint of Eileen Michaud

Complainant:

Eileen Michaud

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Ms. Eileen Michaud,

OBSERVING that the complaint of Ms. Michaud, who brings her complaint on behalf of her deceased husband Gerard Michaud, was filed on 6 September 2019, in conformity with Sections 3(4) and 3(5) of the Truth Reconciliation and National Unity Act, 2018 ("TRNUC Act");

NOTING that pursuant to Section 2(8) of the TRNUC Act that 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 unlawful imprisonment or other deprivation of physical liberty under Section 2(8)(b) of the TRNUC Act,[2] during the primary temporal period of the Commission's mandate from the Coup d'état of 1977 until the reintroduction of the multiparty system in 1993;

RECALLING that pursuant to Rule 25 of the Rules of Procedure and Evidence of the Commission, the test for admissibility is low but a "complaint will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission", and in this case the Commission rendered the complaint of Ms. Michaud prima facie admissible on 26 June 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 Mrs. Michaud on 10 February 2022,[3] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

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

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

1. The Commission notes that Mrs. Michaud claimed that prior to the Coup d'état of 1977, her then-future husband, Gerald Michaud (deceased), was a self-employed architect, and that following the Coup d'état, he was detained in September 1978 for one week. Following his release, he moved to France for a short period, where Mrs. Michaud, his then-girlfriend, was studying;

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

[3] Hearing No. 255 of Thursday, 10 February 2022.

2. According to Mrs. Michaud, Mr. Michaud had been urged by his mother to leave Seychelles when he was released from detention, on the grounds that his life was apparently being threatened;

3. Mrs. Michaud stated that her husband never talked about politics and that she did not know the reason for his arrest, and that he had told her that he had been arrested but did not speak any further about it;

4. The Commission recalls that there was a list of persons arrested in April 1978, and a report made by the Commissioner of Police on the reasons for their arrests as well as newspaper articles identifying those that had been detained at that time, and that Mr. Michaud did not appear on that list or in any of the newspaper articles;

5. The Commission sought the assistance of Tyte Morin as to whether he recalled a Mr. Gerald Michaud having been detained during the period in question, and Mr. Morin stated he had no such recollection;

6. The Commission also sought the assistance of the police authorities, but they had no record of the arrest of Mr. Michaud;

7. In light of the foregoing lack of corroboration, the Commission is unable to establish to a balance of probabilities that Mr. Michaud suffered the violation of unlawful imprisonment or other deprivation of physical liberty under Section 2(8)(b) of the TRNUC Act;

8. The Commission further recalls that Mrs. Michaud claimed that upon Mr. Michaud's return to Seychelles, he was called to State House and offered a job by President René as an architect/design consultant for the President and his Government;

9. The Commission recalls Mrs. Michaud's evidence that her husband accepted this job offer and commenced work for Mr. René in 1978, and was involved in various projects such as at the President's residence at L'Exile, Camion Hall, Oceangate House, National Youth Service villages, and the International Conference Centre, among other building projects;

10. Mrs. Michaud recalled that at the time her husband first started working with State House, she returned to France to continue her studies for three years;

11. Mrs. Michaud claimed that her husband was "slaving" himself working for State House, and that he could be called at any time to go to State House or to go to an island to finish an airstrip;

12. Mrs. Michaud stated that for 17 years, her husband worked for State House, and then he passed away at 42 years of age. She claimed that his death at that young age resulted from the pressure he was placed under in working for State House. She noted that he was an introvert by character, and that he never spoke about the work he was doing, and she would be informed by other persons as to which buildings he was working on;

13. Mrs. Michaud recalled that her husband had some internal bleeding, but said that she did not know the cause of death, but that he had been ill for six months and then he deteriorated. She recalled

that when he was at the hospital, he needed oxygen, but the nurse told her that there was no oxygen available;

14. Mrs. Michaud stated that after her husband passed in 1994, he left behind her and their 12-year-old son, and that she went to see President René and informed him that Mr. Michaud had worked with President René for 17 years and that she considered it fair that some compensation be paid to her and her 12-year-old child. Mrs. Michaud stated that Mr. René told her that he would do his best and let her know, but he never got in touch with her;

15. Before the Commission, Mrs. Michaud stated that her husband had been a contributor to Seychelles, and that his legacy lives on in the buildings he was involved in, and that it is only fair that he is compensated for his service to the people of Seychelles;

16. The Commission notes that it sought to ascertain the employment file of Mr. Michaud but could find no evidence of his employment at State House, and only obtained an employment file from the Ministry of Administration and Public Works, which evidenced the employment of Mr. Michaud from May 1969 until his resignation, effective 1 February 1973;

17. The Commission finds that Mrs. Michaud has not identified or established that Mr. Michaud suffered a human rights violation either related to his employment or arising from an alleged failure on the part of the President of Seychelles to acknowledge his contributions to the development of Seychelles through the payment of compensation to her and her child upon the passing of her husband;

18. 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;

19. The Commission finds therefore that the complainant in this case has not established a basis to be awarded monetary or symbolic reparations in accordance with the recommendations set out in the Commission's Reparations policy, which reflects the views of the victims as to appropriate recommendations due for the human rights violations established.

Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 121.

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