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Case No: 126

The Truth, Reconciliation and National Unity Commission

In the Complaint of John Gouffe

31 December 2022

Determination on the Complaint of John Gouffe

Complainant:

John Gouffe

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

NOTING that the complaint of Mr. Gouffe, who brings his complaint as a victim, was filed on 11 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, 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] as well as beating and intimidation by police officers on political grounds amounting to an abuse of office under Section 2(8)(l) of the TRNUC Act,[3] all 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 Mr. Gouffe prima facie admissible on 25 October 2019;

RECALLING that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard the complaint of Mr. Gouffe on 3 June 2020,[4] 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;

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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] TRNUC Act, sec. 2(8)(l). The Commission has determined that the violation of abuse of office consists of 1) the use of the capacity and powers of a public office 2) to restrict the specific rights or freedoms of a person or persons 3) in a manner that strayed from the proper purpose of the law or of the official's position 4) by a State official. Broadly, the Commission considers that this violation commonly, though not exclusively, includes discrimination or victimisation based on real or perceived political opinion or that is otherwise legally baseless or arbitrary. It recalls that equality before the law, non-discrimination, and freedom from fear of Government abuse are basic principles of human rights law at the level of customary international law as enshrined in the UDHR, and that these rights may be violated when a government official abuses their office. *See* UDHR, arts. 1, 2, 7, 12.

[4] Hearing No. 68, Wednesday, 3 June 2020.

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

1. The Commission finds it established to a balance of probabilities that in 1990, there was a political movement formed, Parti Seselwa (Seychellois Party), and that Mr. Gouffe was one of the first members of that new party. At the time, Mr. Gouffe was residing in Bel Eau with his cousin, Father Wavel Ramkalawan, current President of Seychelles;

2. The Commission finds it established that on the day that President René announced the return of the multiparty system in Seychelles, Mr. Gouffe, put a flag on his truck and proceeded in the direction of Bel Eau, in celebration;

3. The Commission finds it established that Mr. Gouffe was followed by a Special Support Unit (SSU) jeep and that three SSU officers were inside the jeep. The Commission finds that as Mr. Gouffe arrived at the place he was living at Bel Eau, he was stopped by the SSU officers and informed that the officers had been ordered to pick him up. The Commission recalls that Mr. Ramkalawan, who was at the home at the time, advised Mr. Gouffe to go with the SSU Officers, and told him that he would contact the Commissioner of Police, Mr. Camille;

4. The Commission finds it established that Mr. Gouffe was driven a short distance by the SSU officers and then taken out of the jeep and kicked in the back, and once he fell to the ground, they began to kick him all over his body. The Commission recalls Mr. Gouffe's evidence that as he was being kicked, he asked what was happening, and the SSU Officers informed Mr. Gouffe that they had been ordered to kill him. They then started to hit Mr. Gouffe all over his body with the butts of their guns. Mr. Gouffe informed the Commission that he heard one of the officers ask whether they were going to kill Mr. Gouffe, and another officer stated that they could not kill him as Mr. Gouffe's family had seen them take him. Mr. Gouffe stated that they then took him back to the jeep and kicked him in his back as he walked;

5. The Commission finds it further established that Mr. Gouffe was then taken to SSU Headquarters, where he continued to be beaten. Mr. Gouffe identified the persons responsible for his beating as George Bibi, a person called Alvin who lived in the Maldives, a person called Andre Bristol (deceased), and Andre Quilindo (deceased) as the person who gave the orders that he be beaten;

6. The Commission recalls that as Mr. Gouffe was being beaten at SSU, Mr. Quilindo came and told the officers that the Commissioner of Police had instructed that they release Mr. Gouffe;

7. The Commission recalls the evidence of Mr. Gouffe that President Ramkalawan then came and collected him and took him to see a doctor;

8. The Commission notes that Mr. Gouffe's evidence was corroborated by President Ramkalawan, who informed the Commission that Mr. Gouffe was his cousin and that President Ramkalawan's mother and Mr. Gouffe's mother were sisters;[5]

[5] Hearing No, 152 of Thursday 13 May 2021.

9. President Ramkalawan stated that Mr. Gouffe lived with him at his home, and they started Parti Seselwa underground. They produced a paper that talked about political activities, and Mr. Gouffe was amongst the first people to distribute that paper. It was illegal, he said, so they would distribute them at night, specifically on Saturday nights;

10. President Ramkalawan recalled that Mr. Gouffe was a brave person, and he put a Parti Seselwa sticker on his car, and one evening when President Ramkalawan was sitting at Bel Eau on his veranda, Mr. Gouffe arrived with another vehicle following him, and came into the yard and someone called out to President Ramkalawan that they were after Mr. Gouffe;

11. President Ramkalawan recalled that two PMU Officers came out of the vehicle that had followed Mr. Gouffe and informed President Ramkalawan that Mr. Gouffe was to be arrested. President Ramkalawan recalled that he told Mr. Gouffe to go with them and that he would call the Commissioner of Police, Mr. Camille, with whom President Ramkalawan had a good relationship;

12. President Ramkalawan confirmed that Commissioner Camille assured him of Mr. Gouffe's release, and President Ramkalawan was later called by Mr. Gouffe to come and collect him from PMU Headquarters at Petit Paris;

13. President Ramkalawan informed the Commission that Mr. Gouffe informed him that the PMU officers had beaten him and then taken him to the PMU camp, where Andre Quilindo issued a warning to Mr. Gouffe that this was only the beginning and to "wait until the flower had bloomed";

14. The Commission recalls President Ramkalawan's evidence that he took Mr. Gouffe to the hospital and obtained a record of his injuries, which he kept for many years, but lost the document when he moved from Bel Eau to St. Louis;

15. The Commission recalls that it served a suspect notification on Mr. George Bibi, but later learnt that his correct name was Gilbert Bibi and that he was deceased;

16. The Commission recalls that a Commission investigator identified the person called Alvin as Gerard Alvin Simeon, and obtained a statement from him with respect to the allegations, in which Mr. Simeon stated that he was based at PMU Unit and SSU and that he remembered during 1990, when the country was entering the multiparty system, that people were putting up papers everywhere. Mr. Simeon recalled that at that time, Andre Quilindo was in charge of the PMU, and that all instructions came from him. Mr. Simeon claimed that normally when he was in the team of Gilbert Bibi (deceased) and Guy Bristol (deceased), Mr. Bibi was always the driver as he and Mr. Bristol did not know how to drive;

17. Mr. Simeon stated that he did not recall the year, but that he, Mr. Bibi, and Mr. Bristol had been asked to conduct patrol nearly over the whole of Mahé to identify any person acting in a disorderly manner. Mr. Simeon stated that they were going down in the patrol jeep from the PMU camp in the direction of town, and that when they arrived at Mont Fleuri, at the alley to the college, they saw a jeep parked in the alley. Mr. Bibi, who was a Sergeant at that time, slowed down so they could observe what the person was doing as it was around 8 to 8.30 P.M. Mr. Simeon stated that when they approached the person, they saw him drop some papers on the ground, rapidly return to his jeep, and quickly leave the scene.

18. Mr. Simeon stated that they immediately followed the jeep in the direction of Bel Eau, and they saw the jeep enter the alley in which the National Children Council office was situated. They followed the man and saw him enter the driveway to President Ramkalawan's house, and then leave his jeep and go to the veranda of the house;

19. Mr. Simeon stated that as they got out of their vehicle and approached the man; the man told President Ramkalawan that Mr. Simeon and his colleagues had been chasing him to beat him up. Mr. Simeon stated that Mr. Bibi then said that this was not correct, and that they had observed the man spreading papers, and that was why they had followed him;

20. Mr. Simeon claimed that then Mr. Bibi informed the man that they would have to take him with them, and President Ramkalawan asked where they were going to take him, and they informed him that they would take him to their unit. Mr. Simeon claimed that they then took the man directly to the PMU. Mr. Simeon claimed that Sergeant Alix Payet was the one on duty, and that they handed Mr. John Gouffe over to Mr. Payet and informed him of what they had seen him doing;

21. The Commission recalls that on 6 May 2022, Mr. Alix Payet was contacted with regard to the statement of Alvin Simeon, and that he replied by saying that he joined the Seychelles Police Force in 1972 as a trainee constable and he was attached to PMU until 2008, when he retired at the rank of Inspector. Mr. Payet said he knew Alvin Simeon very well and they were good friends; he said Mr. Simeon was a man of character and was a bit arrogant; he also knew Andre Bristol and George Bibi, who have since passed away;

22. Mr. Payet said he did not recall any situation when Alvin Simeon handed over any person to him, though he said it could have been Andre Kilindo who did so, because he was not working in his shift during that time;

23. The Commission recalls that Mr. Simeon also stated that at that time, Mr. Antonio Camille was the Commissioner of Police and he learnt that Mr. Ramkalawan called Commissioner Camille about the arrest; and it was Commissioner Camille who informed Andre Quilindo;

24. Mr. Simeon recalled that not long after Mr. Quilindo arrived at PMU, they handed over the papers they had picked up and then they left again on their patrol;

25. Mr. Simeon claimed that when they returned from their patrol in the early morning, they did not see Mr. Gouffe, and that he believed that Mr. Quilindo spoke with him and then released him. Mr. Simeon claimed that he never hit Mr. Gouffe, and he did not observe anyone else hit Mr. Gouffe;

26. The Commission finds that the arrest of Mr. Gouffe was based on the fact that he had been seen distributing political materials for Parti Seselwa in 1990, at which time the Seychelles was a one-party State and thus the activity was illegal. The Commission finds that an arrest on that basis contravened established international law by violating Mr. Gouffe's fundamental rights to freedom of non-discrimination on the basis of political beliefs and freedoms of association, assembly, and expression.[6] The Commission notes that even though Mr. Gouffe's period of deprivation of liberty

[6] *See* UDHR, arts. 2, 19, 20.

was not temporally long, it is clear on the evidence before it that he was arrested for the express purpose of being punished by being physically beaten; in that regard, the Commission recalls that although it has found in other cases that a brief arrest or detention does not amount to a violation under Section 2(8)(b) of the TRNUC Act as such can be said to be within the permissible discretion of the police to hold a person without charges pending investigation, here the Commission finds that there was never any intention to investigate, but rather this event was meant to target and victimise Mr. Gouffe and send a message to other Parti Seselwa supporters;

27. On that basis, the Commission thus determines that the facts before it establish to a balance of probabilities the violation of unlawful imprisonment or other deprivation of physical liberty under Section 2(8)(b) of the TRNUC Act;

28. The Commission further finds that as established in other cases, President Albert René bears individual responsibility for the unlawful deprivation of Mr. Gouffe and corresponding violation of his rights to physical liberty and equal protection of the law,[7] and that it was the policies of President René that outlawed any political opposition to the party that had taken power with the Coup d'état of 1977 in contravention of established principles of international law; and as the President was acting in his official capacity, his responsibility can be imputed to the State;

29. The Commission further accepts the evidence of Mr. Gouffe that he was beaten by the PMU following his arrest, based on the evidence adduced but also on the pattern of evidence before the Commission which clearly establishes that the beating of civilians on political grounds was a common practice of the PMU; indeed, so notorious were their activities that they were known in Seychelles as the "Gard Bate" – the police that beat people;

30. The Commission determines that this treatment can be best characterised as the violation of abuse of office, rather than as other acts under Section 2(8)(m) of the TRNUC Act, for reasons of severity and because the beating in this instance was tied to the foregoing violation, Mr. Gouffe having been beaten in punishment for the illegal activity of distributing anti-Government leaflets; the Commission finds in this regard that rather than subject him to the legal process at the time, *i.e.*, an investigation and court hearing following an arrest, the PMU abused the power of their authority and physically beat Mr. Gouffe, which the Commission finds to have been unnecessary and disproportionate in the circumstances, rendering such treatment arbitrary and unlawful;

31. The Commission finds that while it has received evidence that Mr. Bibi, Mr. Bristol, and Mr. Simeon were the direct perpetrators of the beating of Mr. Gouffe, that evidence has not been corroborated to a balance of probabilities, so it declines to accord those individuals perpetrator status; however, the Commission is satisfied that responsibility for the abuse of office can be ascribed to the PMU generally and to President René, due to the President's effective control and authority over the police and the interrelatedness of this claim with the foregoing violation, of which President René was found to be the direct perpetrator;

32. As above, as the actors responsible for beating Mr. Gouffe were State actors, the Commission finds that responsibility for this abuse of office can be imputed to the State;

[7] *See id.*, arts. 3, 7, 9.

33. The Commission therefore finds that Mr. Gouffe suffered the following violations: unlawful imprisonment or other deprivation of physical liberty pursuant to Section 2(8)(b) of the TRNUC Act, and abuse of office by a Government official pursuant to Section 2(8)(l) of the TRNUC Act;

34. 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;

35. 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 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 126.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui, Commissioner

Archbishop James Wong, Commissioner