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Case No: 130

The Truth, Reconciliation and National Unity Commission

In the Complaint of David Andre

31 December 2022

Determination on the Complaint of David Andre

Complainant:

David Andre

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

OBSERVING that the complaint of Mr. Andre, who brings his complaint as a victim, was filed on 9 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 wrongful termination of employment from the Civil Service pursuant to Section 2(8)(j) of the TRNUC Act[2] and wrongful denial of the right to employment pursuant to Section 2(8)(i) of the TRNUC Act[3] from 1997, a time period that falls outside the primary temporal period of the mandate of the Commission from the Coup d'état of 1977 until the return to multiparty in 1993, but nonetheless satisfies the Commission's thematic mandate as the human rights violations alleged are claimed to have been motivated on political grounds and implemented by a Government Minister of the same Government that had taken power with the Coup d'état of 1977;

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. Andre prima facie admissible on 20 February 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. Andre on 3 June 2020[4],

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)(j). The Commission has considered that the violation of wrongful termination of employment under the TRNUC Act consists of the 1) dismissal of a person from their position at work, 2) whether by unlawful or arbitrary means, including but not limited to reasons of retaliation or discrimination, 3) by a perpetrator. The Commission notes that this violation applies to discrete events, i.e., single acts of firing, either where the State made a direct termination of one or more of its employees in a wrongful manner or where the State interfered with the private employment of an individual resulting in the person's termination. The violation applies equally to dismissal of employment from either the public or private sector. Fundamentally, this violates an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". Universal Declaration of Human Rights [UDHR], G.A. Res. 217 (III), 10 December 1948, art. 23(1).

[3] TRNUC Act, sec. 2(8)(i). The Commission has considered the violation of wrongful denial of employment to include a 1) repeated refusal to hire, promote, otherwise interfere with or refuse a person 2) in pursuit of employment in that person's chosen field, 3) for reasons other than business necessity or some other reasonable and articulable basis 4) by a perpetrator. As with the violation of wrongful termination, this violation applies equally to dismissal of employment from either the public or private sector and is a fundamental violation of an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". UDHR, art. 23(1).

[4] Hearing No.68 of 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 on 13 June 1996, Mr. Andre was appointed as Assistant Director (Head of Music Conservatoire) Seychelles School of Music within the Ministry of Education and Culture, and that during this employment he also gave private music lessons to earn additional funds to put towards his housing loan;

2. The Commission recalls that on 9 January 1997, Mr. Andre was informed by the Ministry of Education and Culture of proposed restructuring, and offered a new post as Head of Section, Creative Arts, which he was asked by letter, dated 27 January 1997, to inform them of his acceptance;

3. On 28 January 1997, Mr. Andre responded that he wished to remain in the Conservatoire of Music and requested information regarding his present status, roles, and responsibilities in the Conservatoire of Music;

4. On 13 February 1997, Mr. Andre was notified by the Ministry of Education and Culture of the integration of the Conservatoire of Music into the College of Arts, and the subsequent appointment of a new Director, and informed Mr. Andre that he would have to relinquish his duties as Assistant Director (Conservatoire of Music) with immediate effect and that he would be allocated the duties of an instructor if he remained;

5. On 27 February 1997, Mr. Andre responded to the letter of the Ministry of Education and Culture and expressed his shock about its contents, and queried whether the new post had been advertised and why it had not been offered to him as a qualified Seychellois rather than given to a foreigner, which was not in the accordance with the policy of the National Manpower Plan of the Ministry of Administration as per the Circular dated 7 May 1991, subject "Localisation", which requested all Government organisations to replace expatriates with qualified Seychellois;

6. The Commission notes that the foreigner recruited had held the position of Director of the Dance Department, and had fewer qualifications than Mr. Andre for the post in question;

7. On 21 March 1997, the Ministry of Education and Culture responded to Mr. Andre and stated that there was restructuring within the Ministry, and referred to the new post offered to him and reiterated the Ministry's intention to seek determination of his contract;

8. On 12 May 1997, Mr. Andre wrote to seek a meeting with the Minister of Education and Culture, Mr. Patrick Pillay, to which no response was made;

9. On 10 July 1997, Mr. Andre was informed that his contract would be determined with effect from 15 July 1997;

10. On 16 July 1997, Mr. Andre was informed that his appointment as Instructor in the College of Arts was confirmed with a reduction in salary and supplement of SR 29,400 annually, and that following

Mr. Andre's request for more details of the duties of the post, Mr. Andre instructed an attorney to represent him;

11. On 22 July 1997, Mrs. Nichole Tirant-Gherardi, representing Mr. Andre, wrote to the Principal Secretary of the Ministry of Administration and Manpower and stated that no reasons had been provided to Mr. Andre for his contract determination, and requested the provision of those reasons no later than 5 August 1997;

12. On 25 July 1997, Mr. Andre wrote to President René; Mr. Andre recalled before the Commission that President René met with him, and when Mr. Andre told him about his circumstances, the President stated "David what has happened with you was brutal and erratic", but the President claimed he could do nothing about it because he could not over-rule the decision of the Minister;

13. On 28 July 1997, Mr. Andre was informed by the Ministry of Education and Culture that he should confirm acceptance of the post of Instructor by 31 July 1997, or necessary steps would be taken to stop payment of his salary, to which Mr. Andre responded on 31 July 1997 that he could not answer until several unresolved issues were resolved;

14. On 5 August 1997, the Ministry of Education and Culture advised Mr. Andre that he had not confirmed acceptance, nor reported for duty at the College of the Arts, and that the necessary steps had been taken to stop payment of his salary;

15. The Commission recalls that in 1998, Mr. Andre filed a case against the Government of Seychelles in the Supreme Court,[5] alleging that he was not given notice of the termination of his contract and his case was dismissed;

16. The Commission recalls that Mr. Andre claimed before it that he was targeted on political grounds. He said that he was the person who wrote the new and present national anthem with George Payet, and that he was sympathetic towards some of the opposition members, including Mr. Wavel Ramkalawan and Jean Francois Ferrari. Further, Mr. Andre also assisted in setting up a private school in Seychelles, the Independent School, and had been told by someone, whom he could not recall, from the Ministry of Education that he should not be involved with the Independent School;

17. The Commission put the allegation to Mrs. Jessy Esparon, who at the relevant time held the position of Director General, Planning and Administration in the Ministry of Education and Culture. Mrs. Esparon responded as follows:

> I confirm that I was employed as Director General responsible for Planning and Administration in the Ministry of Education and Culture at the time that Mr. Andre's contract as Assistant Director of the School of Music Dance was terminated on 10 July 1997.
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> The Minister for the Ministry of Education and Culture then was Mr. Patrick Pillay, the Principal Secretary was Mr. Mohammed Afif and the Director General for Culture Division to whom Mr. Andre reported was Mrs. Marie-Therese Choppy.

[5] Civil Side No 3 of 1998.

The order to restructure the School of Music and Dance into a College of Arts and the choice of candidate to head the College was made by the Minister. The restructuring meant that the post of Assistant Director was to be abolished and replaced by a Director. Prior to the restructuring the matter was discussed with Mr. Andre and he was offered another position as Head of Section of the Creative Arts in the Curriculum Development arm of the Ministry. Mr. Andre did not confirm acceptance of the offer.

The case for restructuring and subsequent abolition of the post was put to the then Ministry of Administration and Manpower for approval. That followed the abolition of the post and the termination of Mr. Andre's contract in accordance with the relevant clause of his contractual agreement. The circumstances surrounding his termination of employment were made very clear to him as the intention to abolish the post was discussed with him.

Mr. Andre took his case to Court when I was also called upon to represent the Ministry of Education and Culture as witness which I did to the best of my ability.

There is a Court judgment on the case which was dismissed on grounds that the Court did not find the termination of contract vexatious, humiliating or abusive.

With regard to the choice of candidate to fill the post of Director, one would have thought that the obvious choice would have been Mr. Andre. Unfortunately, a foreign dance lecturer who was also employed at the school by the name of Vivienne Clemens, was chosen to be the Director. The person best suited to answer the question as to the reason for choosing Mrs. Clemens is Mr. Patrick Pillay, the former Minister.

I did what I had to do under the command of the Minister and the Principal Secretary although I am the one being called upon to give information but there are questions that I cannot answer on behalf of others. I did not question the Minister's motive.

I expect that Mr. Patrick Pillay will be called upon to answer the question.

18. The Commission also put the allegations to Mr. Patrick Pillay that Mr. Andre was targeted on political grounds in not being chosen to be promoted to Director of the College of Arts. The Commission advised that it was alleged that Mr. Pillay had refused to see Mr. Andre upon his request, and that the position of Director had been offered to a foreigner when there was a clear policy to favour qualified Seychellois. Mr. Pillay responded as follows:

The fact as stated in your letter are correct. In line with the policy of the Ministry of Education and Culture to provide equality of opportunity to all Seychellois you, David Andre was asked to take steps to identify young talents in music and dance amongst Seychellois youth in state schools. He chose rather to provide music lessons to the elite students in a fee-paying private school.

Such racist and elitist tendencies could not be tolerated. He was replaced as Head of School by Miss Vienne Clement, a dance instructor who was receptive to our egalitarian policies and was, in addition, a far better manager that Andre.

With regard to wanting to see the President and the Minister, he was referred to the CEO (Principal Secretary) of the Ministry, an executive who would have provided him with the rationale for his replacement as HoS (Head of School).

> In my 50 years plus service of Seychelles and the Seychellois, I have never shied from taking decisions which to some small-minded individuals may appear to be based on victimization; but which to my mind are based on the interest and advancement of the majority of the Seychellois youths, rather than that of a privileged few. Same like under the thinly veiled trappings of racist and elitism.

19. The Commission recalls the pattern of evidence it has received that those perceived as being against the regime that had taken power with the Coup d'état of 1977 were systematically discriminated against on political grounds, and that this discrimination continued well past the so-called re-introduction of the multiparty system;

20. The Commission finds it established to a balance of probabilities that Mr. Andre suffered the violation of wrongful termination from the public service on political grounds, and determines that termination on those grounds was discriminatory and in contravention of his freedom from discrimination on the basis of his perceived political opinion[6] as well as his fundamental rights to freedom of association and assembly;[7]

21. The Commission recalls the evidence of Willy Confait, given in reference to another case,[8] that at the time in question, it was President René who determined employment, promotion, and termination in the public service;[9]

22. The Commission finds that Minister Pillay bears perpetrator status for the wrongful termination of Mr. Andre's employment, as well as President René, as Mr. Andre's termination could only have been carried out with the President's approval in light of the President's sole authority over employment, terminations, and promotions of the public service; and, as a primary organ of the State, the responsibility of the Minister and the President for this violation can also be attributed to the State;

23. The Commission therefore determines on the balance of probabilities that Mr. Andre suffered the violation of wrongful termination of employment under Section 2(8)(j) of the TRNUC Act;

24. The Commission further finds it established to a balance of probabilities that following his termination from his position, Mr. Andre was denied security clearance for further employment with the public service, his chosen field, and that he was denied employment for 20 years following;
25. The Commission notes that while Mr. Andre was able to pick up some work in the private sector, this was not his preferred employment and the opportunities available to him were limited to private teaching or working with choral societies;

26. As the present violation is inherently linked to the violation of wrongful termination, the Commission finds that Mr. Andre was effectively denied further employment opportunities on political grounds in connection to his initial termination, in contravention of his freedom from

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[6] *See* UDHR, art. 2.
[7] *See id.*, art. 20.
[8] *See* Hearing of Willy Confait of 13 September 2019, Case Determination No. 002: Lewis Betsy. The General Order 1966 dictated the terms and conditions of those in the public service, and was created during the colonial times and updated to the Public Service Orders in 1985.
[9] Public Service Orders (Second Edition), June 1996, sec. 17.

discrimination on the basis of his perceived political opinion and right to freedom of association and assembly;

27. On that basis, the Commission finds on the balance of probabilities that Mr. Andre also suffered the violation of wrongful denial of the right of employment pursuant to Section 2(8)(i) of the TRNUC Act, for which the Minister of Education and Culture, Mr. Pillay, and President René, and thus the State, bear responsibility as discussed in the foregoing violation;

28. The Commission therefore determines that Mr. Andre suffered the following violations: wrongful termination of employment under Section 2(8)(j) of the TRNUC Act, and wrongful denial of the right to employment under Section 2(8)(i) of the TRNUC Act.

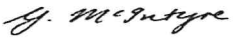
29. The Commission recalls that it is mandated pursuant to Section 3(7) of its Act to make recommendations for reparations for victims for human rights violation it has determined to have been established as a result of its investigations;

30. 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 130.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson 

Michael Green, Vice Chairperson 

Marie-Therese Purvis, Commissioner 

Jacques Koui Gbilimou, Commissioner 

Archbishop James Wong, Commissioner 