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Case No: 164

The Truth, Reconciliation and National Unity Commission

In the Complaint of Mr. Sunley Sinon

31 December 2022

Determination on the Complaint of Mr. Sunley Sinon

Complainants:
Mr. Sunley Sinon

I. ADMISSIBILITY

1. The following determination is made pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission (TRNUC) Act, 2018, which provides that the Commission shall make decisions and recommendations. The determination is in accordance with the mandate of the Commission as set out in Section 3(3) of the Act "to receive complaints in respect of alleged violations, to gather, collate and analyse information and evidence with respect thereto, and to make decisions". Pursuant to Section 2(8) of the Act, a violation means a human rights abuse committed during or in relation to the Coup d'état of 5 June 1977, and includes a non-exhaustive list of enumerated acts.[1]

2. Prior to the investigation of a complaint, pursuant to Rule 25(1) of the Commission's Rules of Procedure and Evidence ("Rules"), adopted by the Commission pursuant to Section 8(1) of the Act, the Commission must satisfy itself that the complaint is admissible before it for determination. To be admissible before the Commission, a number of criteria must be satisfied as outlined below.

3. Pursuant to Section 3(4) of the TRNUC Act, a complaint shall be filed within six months of the Commission's commencement of mandate, and pursuant to Section 3(5), a complaint may be filed by a victim, a representative of a victim, or a close surviving relative of a deceased victim. The mandate of the Commission commenced on 9 August 2019. To be admissible, complaints must have been filed on or before 9 February 2020.

4. The complaint of Mr. Sunley Sinon was filed on 25 September 2019. Consequently, the complaint of Mr. Sinon satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Pursuant to Section 2(8), the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977. Section 2(8), subparagraphs (a) to (m), identifies a non-exhaustive list of acts falling within the definition of a violation of human rights. The requirement that a complaint be related to the Coup d'état of 1977 requires the Commission to establish that there is an alleged connection between the allegation and the Coup d'état of 1977. Pursuant to Rule 25(2) of the Rules, a complaint "[...] will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission". The threshold for admissibility to be granted is low, though a complaint deemed by the Commission to be admissible may later be deemed inadmissible following investigation.

6. Mr. Sinon's complaint alleged the denial of the right to education through his expulsion from the National Youth Service (NYS) in 1987, a time when no other education facilities were available in Seychelles, as a result of the policies of the one-party State. The Commission characterises this claim as alleging the violation of abuse of office by a Government official.

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[1] "[...] (a) unlawful killing; (b) unlawful imprisonment or other deprivations of physical liberty; (c) torture; (d) rape; ()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"].

II. PROCEDURAL HISTORY

7. Satisfied that the complaint alleged human rights violations relating to the Coup d'état of 1977, the Commission determined the case of the complainant prima facie admissible on 25 February 2020.

8. Having deemed the case prima facie admissible, on 25 February 2020, the Commission commenced its public hearings in relation to the case of the complainant.[2] The Commission received evidence from two witnesses through statements provided, and accessed relevant documentary evidence.[3]

III. EVIDENCE RECEIVED

A. Evidence of Mr. Sunley Sinon

9. On 16 July 2021, Mr. Sinon appeared before the Commission to set out his complaint before it. Mr. Sinon informed the Commission that he had completed primary school and joined the National Youth Service (NYS) on Ste Anne Island in 1987. He was posted to Ste Anne 1 Village in Cluster B3 with around 60 other students. Mr. Sinon stated that he was given the responsibility of being the storekeeper for the Cluster.

10. Mr Sinon alleged that there was bullying at the NYS, and that he was involved in an incident approximately two weeks after his arrival at NYS. Mr. Sinon claimed that he was cornered in the cluster by two students. He claimed that one of them took hold of him and lifted him in the air and tried to force him to give them cheese from the store, which Mr. Sinon refused to do. Mr. Sinon claimed that he was then thrown onto the ground, and two students attempted to take hold of him and put him into the deep freezer. Mr. Sinon said that he became frustrated and took a wooden stick, and chased them until they reached the Village Coordinator's office.

11. Mr Sinon stated that he was suspended as a result of this incident and sent home. After two weeks at home, he received a letter from the Ministry of Education informing him that he had been terminated from the NYS. Mr. Sinon claimed that his mother appealed the decision, but she was not successful.

12. Mr Sinon informed the Commission that this was the end of his education, as there were no other educational institutions available in Seychelles. He stated that he was "morally affected" by the incident, and the lack of education had caused him to fail in all employment until today.

B. Evidence of Hughes Adam

13. To ascertain the veracity of Mr. Sinon's complaint on 19 July 2021, the Commission wrote to Mr. Hughes Adam, the Village Coordinator of Ste Anne 1 at the relevant time. The Commission informed Mr. Adam of the complaint made and requested that he provide what information he could in relation to the matter no later than 20 August 2021.

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[2] Hearing No.179 of Friday 16 July 2021, Sunley Sinon.
[3] Hughes Adam and Johnny Bamboche.

14. On 10 August 2021, Mr. Hughes Adam responded to the Commission's request. Mr. Adam advised the Commission that he recalled that Mr. Sinon was dismissed from the NYS due to an incident of violence and/or intent to cause bodily harm. Mr. Adam stated that he did not believe it was the first such incident that Mr. Sinon had been involved in. Mr. Adam further stated that the case would have been investigated by the Village Coordinator, and he confirmed that he held this position at the time. Mr. Adam also advised that the NYS had a Board and a Director, who would have been the appropriate body through which to seek recourse, if Mr. Sinon considered that the decision made was unfair.

15. Mr. Adam added that on a personal note, throughout his four decades in management in both Government and the private sector, in working with thousands of employees and youths, he had only dismissed an individual as an absolute last resort in order to preserve the safety and integrity of an organisation and its people. Mr. Adam informed the Commission that while mistakes are human and to be expected in any setting, especially in a place of learning, he could not imagine a scenario in which he would approve a dismissal unless he felt that it was the only way to assure the wellbeing of students under his supervision and responsibility at that time.

C. Evidence of Johnny Bamboche

16. The Commission contacted Johnny Bamboche, who was one of the students alleged to have been involved in the incident with Mr. Sinon, and requested that he provide what information he could into the matter.

17. On Thursday 20 August 2021, Mr. Bamboche visited the Commission premises and provided a statement to the Commission investigator assigned to this case. Mr. Bamboche stated that he could not recall the date, but that on the day of the incident, he and other students were sitting in their unit of Cluster B3 at Ste Anne Island, playing cards. He recalled that Mr. Sinon came and started shouting, and Mr. Bamboche asked Mr. Sinon to leave the unit. Mr. Bamboche claimed that Mr. Sinon refused and started swearing, and that he insulted Mr. Bamboche using obscene language. Mr. Bamboche claimed that Mr. Sinon then slapped him in the face and hit him with a box of margarine. Mr. Bamboche stated that Mr. Bamboche then picked up the box of margarine and chased Mr. Sinon as he ran to the Animator, then Mr. Toussaint's office.

18. Mr. Bamboche stated that the Animator, Mr. Toussaint, made them write statements of what had happened. Mr. Bamboche claimed that after the incident, Mr. Sinon threatened to kill him with a knife, and Mr. Bamboche had to be relocated to another Cluster, B4, to sleep for the night. Mr. Bamboche recalled that disciplinary action was taken against Mr. Sinon, and he believed he was terminated. Mr. Bamboche stated that Mr. Sinon's allegations made before the Commission that they "were in the store and asked Mr. Sinon for cheese and tried to put him in the freezer" were completely false.

D. NYS Student File

19. On 29 April 2021, the Commission requested access to Mr. Sinon's NYS student file through the Director of Seychelles Archives. The Commission was granted access to that file on 6 May 2021. The evidence on that file established that Mr. Sinon joined the NYS in January 1988 with the consent of his parent, and at that time, he was aged 14 years. Documents on file also recorded that Mr. Sinon had been involved in several incidents. In particular, it was alleged that Mr. Sinon had threatened

Theophane Servina with a knife, insulted him, and used obscene language; further he insulted and slapped Mr. Bamboche; and he had used a knife to scare other students.

20. A document on the file, dated 17 February 1988, from Mr. Toussaint addressed to the Village Coordinator, requested disciplinary action be taken against Mr. Sinon for his intolerable behaviour.

21. A letter dated 10 February 1988, from the Ministry of Education, Information and Youth to Mrs. Antonia Sinon, Mr. Sinon's mother, informed her that Mr. Sinon had been suspended from the NYS after using a knife on Saturday, 6 February 1988, to threaten a student in his cluster and again using a knife to threaten a student on Monday, 8 February 1988.

22. By letter dated 19 February 1988, the Ministry of Education, Information and Youth informed Mrs. Sinon that her son had been dismissed from the NYS effective from Thursday, 18 February 1988.

23. There are no further documents on file. In particular, there was no document to indicate that Mrs. Sinon had sought to formally appeal her son's dismissal from NYS on the grounds indicated.

IV. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

24. The Truth, Reconciliation and National Unity Commission Act, 2018 ("Act") directs that the Commission shall "abide by universally recognised legal principles and human rights norms" and is "to observe applicable and appropriate rules of natural justice and international fair trial standards".[4] These principles must guide the Commission's determination of whether the conduct alleged constitutes human rights abuse pursuant to its Act.[5]

25. The reference to "universally recognised legal principles and human rights norms" within section 3(9) of the Act directs the Commission to consider international human rights standards as the applicable substantive law, while the reference to "applicable and appropriate rules of natural justice and international fair trial standards" within section 6(8)(a) of the Act primarily concerns the procedures for the Commission's determinations, particularly where it is determining perpetrator status.[6]

26. The Commission recalls that pursuant to Section 7(b) of the TRNUC Act, in order to achieve its objectives the Commission may "determin[e] the responsibility of individuals in respect of any

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[4] TRNUC Act, secs. 3(9), 6(8)(a).

[5] *Id.*, section 2(8).

[6] Hearing of Attorney-General Frank Ally, TRNUC, 6 July 2020 ("This law is giving you the opportunity for you to fly right over whatever thing had been done by a law, and will tell the Commission, Commission you can make whatever findings that you feel if there was...if there are violations of human rights. This was the reason why there have been the Truth, Reconciliation Commissions in those countries. In South Africa also apartheid was legal, it was legal, but it was obvious for the national reconciliation of South Africa that the law that made apartheid legal infringed - it was a gross violation of one's human rights and therefore when it made a finding it did not take it into consideration. So you are not there to take into consideration if a law was a lawful or it was not. You are here to see whether that action taken in relation to that complainant is a violation or not, and when you will define that violation you will have to define it in relation to that definition and that provision which tells you have to look at universal human rights".).

violations".[7] Any finding of individual responsibility is to a balance of probabilities standard.[8] In that regard, the Commission, underscores that any such determination of individual responsibility is not made in a criminal legal sense, but rather to reveal the truth about events that occurred during or in relation to the Coup d'état of 1977. Thus, the Commission interprets Sections 3(9) and 6(8)(a) of the Act discussed above to direct it to provide certain due process guarantees, such as notice of determination of suspect and perpetrator status, the right to reply before the Commission, and respect for a perpetrator's assertion of the right against self-incrimination, among others.

27. The Commission further notes that a persons who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any violation and [offering] sincere apologies to the victim or victims".[9] The Commission considers that these provisions, in light of Sections 3(9) and 6(8)(a), provide sufficient protection for the human rights of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

28. The Commission notes that while each alleged human rights violation will be assessed by reference to universally recognised legal standards and human rights norms, that enquiry does not render the domestic legal framework in which the alleged violation took place irrelevant. The domestic legal framework is instead an important starting point for the examination as to whether the act complained of was legal and then whether it breached human rights standards and norms.

29. In this respect, one important universally recognised human rights norm relevant to the Commission's identification of the substantive standard, but also pertinent to issues of natural justice and fair trial standards, is the prohibition on the retroactive application of the law. Pursuant to this principle the conduct complained of must have been criminalised by some source of law that was previously applicable and which was sufficiently accessible and foreseeable to the individual. At the heart of this principle is the notion of fairness. A persons should not be held to account for conduct that was not criminal at the time it took place.

30. The Commission considers that this principle of non-retroactivity is equally applicable to its consideration of allegations that an act constituted a violation of human rights. As human rights are evolving rights, the Commission considers that when determining whether the conduct complained of breached international human rights standards, fairness requires it to assess that conduct by reference to human rights principles applicable at the time of the alleged violation.

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[7] *Id.*, sec. 7(b).
[8] *Id.*, sec. 6(8)(c).
[9] TRNUC Act, sec. 12(4). However, should the perpetrator exercise their right against self-incrimination, Section 12 would not be applicable as the requirement of a "full and frank disclosure" would not be met. Notably, where a perpetrator petitions for amnesty before the Commission, Section 12(6) provides that regardless of any other written law, "(a) a criminal investigation or criminal or civil proceeding shall not be commenced or shall be discontinued, as the case may be, in respect of any matter for which an amnesty has been sought, until the final determination of the Commission" and Section 12(6)(b) provides that "a perpetrator who has been granted amnesty in respect of a violation shall not be criminally or civilly liable in respect of the acts or omissions that were part of the disclosure and apology. The amnesty shall not affect any order by the Commission for remedies, reparations or rehabilitation". *Id.*, sec. 12(6).

31. Accordingly, the Commission will consider, where relevant, the domestic legal framework under which the alleged act occurred and the consistency of that framework with "universally recognised legal principles and human rights norms" at the time of the act complained. This approach will render the Universal Declaration of Human Rights applicable in all cases along with early co-existing principles of customary international law. Additionally, and by reference to the temporal scope of the allegation, the Commission will consider domestic constitutions and laws and applicable treaties to which Seychelles has committed.

B. Approach to the Evidence

32. Pursuant to Section 6(8) of the Act, the TRNUC is not bound by evidentiary rules. All evidence deemed probative is admissible, including hearsay evidence. The Commission has been careful to assess the evidence of all witnesses in determining the veracity of their testimonies. In so doing, the Commission has been mindful that the vagaries of perception and human recollection, especially when there is a long passage of time between the event and the witnesses' evidence before the Commission, may impact on the reliability of the evidence given, even though a witness is honestly giving that evidence before the Commission.

33. Nonetheless, as a matter of principle, provided the witness has recounted the essence of the incident in acceptable details, the Commission does not consider discrepancies in peripheral details in the evidence of a witness, or between the evidence of various witnesses, as necessarily undermining the establishment of the basic allegations made. In this respect, the Commission finds that due to the passage of time, witnesses cannot be expected to recall with complete accuracy the precise time or dates of events or other peripheral details.

34. The Commission may rely on the uncorroborated evidence of a single witness as establishing a fact alleged, provided it is satisfied of both the credibility and reliability of that witness's evidence. The Commission may also accept accomplice evidence to establish a fact, provided it is satisfied that a motive to lie has been reasonably excluded.

35. The standard of proof applicable to establishing findings of the Commission is the balance of probabilities. The Commission must be satisfied that it is more likely than not that a fact alleged is true.

C. Merits of the Case

36. On the evidence presented before it, the Commission is not satisfied on the balance of probabilities that Mr. Sinon suffered the violation of abuse of office for the denial of education as alleged under Section 2(8)(l) of the TRNUC Act,[10] when he was expelled from the NYS.

37. With regard to the required admissibility nexus to the Coup d'état of 1977, the Commission recalls that Mr. Sinon's expulsion from the NYS occurred in 1988, during the one-party State and thus during the Commission's primary temporal mandate. Further, the Commission recalls that the NYS system was one of the primary education agendas of President René, and that while parents were told that it

[10] TRNUC Act, sec. 2(8)(l).

would be a voluntary choice whether to send their children to NYS, they were not told that a failure to do so would jeopardise certain aspects of their higher education and related opportunities.[11] On that basis, the Commission finds that its thematic mandate is also satisfied as this alleged abuse of office was sufficiently related to the Coup d'état and the René Government's policy priorities.

38. The Commission recalls 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 persons 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.[12]

39. The Commission finds on the evidence received that the first element is easily satisfied. In that regard, it recalls that the NYS was a Government organisation, set up as a key tenet of President René's Government. Further, the decision to expel Mr. Sinon was finalised and communicated by the Ministry of Education, Information and Youth, and thus clearly were decisions of public officials acting in the capacity of their respective offices, the Commission finds the first element to be met.

40. Regarding the second element, the existence of a right or freedom of a person which was restricted, the Commission finds that Mr. Sinon had a right, at the level of customary international law as enshrined in the UDHR, to access to free education at the elementary and fundamental stages, general availability of technical and professional education, and equal access to higher education on the basis of merit.[13] The Commission finds that Mr. Sinon's right to education was restricted when he was expelled from the NYS, given the lack of alternative education options at the time, and thus is satisfied of the second element.

41. As regards the third element, whether the restriction strayed from the proper purpose of law or the position, the Commission is not satisfied that this element is made out. In this regard, the Commission notes that the right to education is not absolute, and thus is liable to certain restrictions at times. In the current circumstances, the Commission notes that education was compulsory only up to S4, the completion of which would entitle a student to join the NYS.[14] The Commission also notes that the Minister was empowered to make regulations as to the manner in which the NYS ran, including the discipline within the village.[15] The Commission finds that the Minister of Education, Information and Youth, as the responsible Minister for the NYS, had a duty to ensure the safety of all students within the NYS. As such, the Commission highlights the evidence contained in Mr. Sinon's student file, that he was expelled from the NYS due to violence towards other students, including having threatened other students with a knife multiple times. The Commission thus finds that Mr. Sinon's expulsion from the NYS was reasonable, and not an unlawful restriction on his right to education, which at his level was no longer compulsory. While the Commission appreciates the lack of options in Seychelles outside

[11] *See* Case Determination No. 024: Sarah Carolus, para. 41; *see also* Final Report, National Youth Service.
[12] The Commission notes 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, and that these rights may be violated when a Government official abuses the power of their office. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, arts. 1, 2, 7, 12.
[13] *See id.*, art. 26(1).
[14] National Youth Service Act, 1980, Cap. 146, sec. 6.
[15] *Id*, sec. 9(2).

of NYS, the Commission highlights that Mr. Sinon's exclusion was a consequence of his own actions. As such, the Commission is not convinced that the third element is fulfilled.

42. As the Commission has found that the restriction to Mr. Sinon's education was not unlawful or arbitrary, but rather flowed from Mr. Sinon's own actions, the Commission declines to consider the other elements of the violation. The Commission is thus not satisfied that Mr. Sinon suffered the violation of abuse of office, under Section 2(8)(l) of the TRNUC Act.

V. RECOMMENDATIONS ON REPARATIONS

43. On the basis of the above findings, the Commission does not recommend reparations in accordance with its Reparations Policy as it is not satisfied any violations were established.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

44. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 164.

45. Each of the undersigned Commissioners hereby swears or affirms that his or her deliberations in this case are based on his or her knowledge of the entire record of the case.

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