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Case No: 252

The Truth, Reconciliation and National Unity Commission

In the Complaint of Phillipe John Hoffman

31 December 2022

Determination on the Complaint of Phillipe John Hoffman

Complainant:

Phillipe John Hoffman

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

OBSERVING that the complaint of Mr. Hoffman who brings his complaint as a victim, was filed on 7 February 2020, 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,[2] and abuse of office[3] through the denial of a police pension, both of which fall within the primary temporal period of the mandate of the Commission from the Coup d'état of 1977 until the return to multipartyism 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. Hoffman prima facie admissible on 28 July 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. Hoffman on 12 October 2020,[4] with Mr. Hoffman being represented by his daughter Chantal Hoffman who spoke on his behalf, 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)(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. 217A (III), 10 December 1948, art. 23(1).

[3] TRNUC Act, sec. 2(8)(l). The Commission has considered 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. The Commission further 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 enshrined in the UDHR, and that these rights may be violated when a Government official abuses the power of their office. See UDHR, arts. 1, 2, 7, 12.

[4] Hearing No. 114 of Monday 12 October 2020.

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

1. The Commission recalls Mr. Hoffman's evidence that he joined the Seychelles Police Force as a Constable on 12 June 1962, and that he left after 15 years and 10 months, having obtained the rank of Sergeant. Mr. Hoffman stated that on 15 April 1978, due to events associated with the Coup d'état of 1977, he had no choice but to resign from the police force;

2. The Commission recalls Mr. Hoffman's evidence that he was on duty at Central Police Station on 4 June 1977, on the midnight to 8.00 A.M. shift. During his shift, three of the participants in the Coup came to the Central Police Station, including Ogilvy Berlouis, Raymond Bonte, and Ogilvy Letourdie (aka Jamaican). Mr. Hoffman recalled they had pointed their guns at him and then put Mr. Hoffman and another of the police officers in a cell until the following day, when he was released to go and sit in the mess area. Mr. Hoffman stated that he heard shots while he was there, and then he was told by other officers that Davidson Chang-Him had been shot.[5] The Commission recalls Mr. Hoffman's evidence that he was allowed to leave for home at 5.00 P.M., and that Mr. Hoffman was traumatised by what he had experienced; he stated that while he resumed his work as a police officer a couple of days later, things were not the same;

3. The Commission recalls the evidence of Mr. Hoffman that he heard that a number of police officers were going to be terminated, and that if a police officer was terminated, they would not be paid their financial dues. Mr. Hoffman recalled that he decided to resign so that he would receive his gratuity, and that he resigned and returned to his native La Digue, where he bought and opened a shop;

4. The Commission notes that Mr. Hoffman's employment file evidenced that he submitted his letter of resignation from the police force on 16 January 1978, and that it was accepted on 30 January 1978. Mr. Hoffman informed in the letter that his resignation would take effect from 15 April 1978. The Commission notes that under Section 47(1) of the Police Force Act, Cap 35, Mr. Hoffman was entitled to a gratuity;

5. The Commission recalls Mr. Hoffman's evidence that the information he received was that he was in the group that was to be terminated, and that the environment in the police after the Coup was very different from before, as the police were not permitted to do their job properly. He recalled that they had to ask permission before they did anything, and they were "not allowed to use their common sense";

6. The Commission recalls Mr. Hoffman's evidence that later, he saw some of the police officers from the list to be fired, and that they confirmed that they had been fired. Mr. Hoffman recalled that Bill Mohammed, Winsley Payet, and Gerald Forte were among them;

7. The Commission notes that Mr. Hoffman resigned voluntarily from the police force to pre-empt a possible termination of his employment, which may or may not have occurred. However, Mr. Hoffman did not provide any evidence before the Commission as to why he believed that he would be on the list of officers to be terminated, other than that he had heard talk that he would be included

[5] *See* Case Determination No. 001: Dorothy Chang-Him et al, in Volume lll.

on the list. Poignantly, he did not allege any affiliation with James Mancham or his political party, though he did inform the Commission that under the British, politics were "not allowed" in the police force, implying that his political beliefs may not have been known;

8. The Commission further notes that Mr. Hoffman was apparently motivated to resign in order to secure the payment of a gratuity, and that he was paid the gratuity when he resigned. Unfortunately, while the Commission appreciates that work in the police force was difficult following the Coup, particularly for members of the Democratic Party or non-aligned officers, the Commission cannot find that the circumstances were such to deem Mr. Hoffman's resignation a *de facto* wrongful termination under Section 2(8)(j) of the TRNUC Act, whether on political grounds or another protected basis so as to violate his right to work and to employment free from discrimination;

9. The Commission recalls Mr. Hoffman's evidence that he was denied his police pension as was prescribed by law, and that he later learnt that the police officers that had been sacked did receive their gratuity and pension after the return of the multiparty system. Mr. Hoffman claimed that he sought to also be paid his pension, noting that there was a law that guaranteed the payment of a pension following more than ten years of service, which Mr. Hoffman said he had;

10. The Commission recalls Mr. Hoffman's evidence that he wrote to President René about this matter, but received no response; he then wrote to the Department of Public Administration, and was informed that he did not have 10 years of service and was not entitled to a pension. Mr. Hoffman stated that when he produced evidence to show that he had more than 10 years of service, the Department of Public Administration "changed their tune" and said that as he had resigned, he was not eligible for a pension;

11. The Commission recalls Mr. Hoffman's evidence that his life has not been easy since the Coup, and that he has suffered different forms of victimisation. The Commission recalls that Mr. Hoffman claimed that his children had been denied assistance in getting a piece of land; that his brother Maxime Hoffman and cousin Michel Hoffman had died in "controversial circumstances"; that "the list is long"; and that Mr. Hoffman wanted his pension as he was now 76 years old and suffering various medical ailments;

12. The Commission recalls that it sought the assistance of the Department of Public Administration with respect to Mr. Hoffman's pension claim. On 16 October 2020, the Commission received a response from the Chief Secretary of the Public Service, Ms Jessie Esparon, who stated as follows:

> The request from Mr. Hoffman has come up several times before but the fact remains that his case does not fall under any legal provision which entitles him to receive a pension.
>
> I attach his personal file for your perusual (sic) if this will serve as a tool to help the Commission understand the reason for his non-entitlement.
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> I regret being unable to assist Mr. Hoffman in spite of his insistence.

13. The Commission notes numerous letters of correspondence on Mr. Hoffman's employment file, advising him of the reasons why he was not eligible for a pension. The Commission notes a letter,

dated 13 March 2007, addressed to Mr. Hoffman from the Principal Secretary of the Department of Administration, which read as follows:

> I regret to inform you that the Police Force Act (Cap 35) does not make provision for payment of a pension.
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> Given that you resigned from the Police Force prior to 31 December 1978, the benefits you have been paid under the Police Force Act (Cap 35), cannot be recomputed under the Pensions Act (Cap 159) to allow for a pension. This is because under the Pension Laws, resignation is not one of the circumstances under which benefits are payable.

14. The Commission also notes a letter from the Ombudsman addressed to Mr. Hoffman, dated 4 December 2009, in which the Ombudsman advised Mr. Hoffman that the Department of Administration had given the following response to his complaint:

> 1. The Police Force Act does not make provision for a pension in the circumstances of your case.
> 2. The fact that you resign (sic) prior to 31 December 1978, the benefits under the Police Force Act cannot be recomputed under the Pensions Act to allow for a pension
> 3. Resignation is not one of the circumstances under which a pension is payable under the Pensions Act
> 4. As regards compensation, you would not be entitled if you were not in employment on the 1st January 1979.

15. The Commission also notes a letter from the Chief Secretary of the Public Service addressed to Mrs. Alexia Amesbury, acting on behalf of Mr. Hoffman, dated 13 December 2018, which stated as follows:

> He (Phillip Hoffman) joined the Police Force on 12 June 1962. He applied for and was granted permission by the Commissioner of Police to resign from the service effective from 15 April 1978. In view that he had completed more than 14 years of continuous service, he was entitled to receive a gratuity under Section 47(1) of the Police Force Act, Cap 35 which was his only entitlement. There was no provision for payment of a pension under the Police Force Act.
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> Mr. Hoffman also applied for a re-computation of his years of service under the Pensions Act Cap 159 but he was not eligible for the benefit in view that he resigned prior to 31 December 1978 before pensionable service was abolished. The circumstances under which a pension is payable under the said Act are outlined in Section 6 and resignation is not one of those circumstances.

16. On the basis of the above, the Commission finds that Mr. Hoffman was not eligible for a pension, nor the re-computation of his service. As Mr. Hoffman was not eligible for either, the Commission cannot find that Mr. Hoffman suffered any restriction of his rights, nor that a Government official misused the power of their office in denying him these benefits. Thus, the Commission finds that no violation under its mandate has been established on these facts;

17. The Commission finds on the balance of probabilities that the facts in this case have not established that Mr. Hoffman suffered any human rights violation under the TRNUC Act;

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 as the complainant in this case has not established any violation of human rights, no reparations are due from the State.

Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 252.

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