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Case No: 256

The Truth, Reconciliation and National Unity Commission

In the Complaint of Francois Ponwaye

31 December 2022

Determination on the Complaint of Francois Ponwaye

Complainant:

Francois Ponwaye

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

OBSERVING that the complaint of Mr. Ponwaye who brings his complaint as a victim, was filed on 17 October 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 abuse of office[2] for the denial of a taxi licence in the mid-1980s, an allegation that falls within the primary temporal period of the mandate of the Commission from the Coup d'état of 1977 until the return to 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. Ponwaye prima facie admissible on 28 January 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. Ponwaye on 15 June 2021,[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 recalls Mr. Ponwaye's evidence that he applied for a position at Radio Seychelles and that he saw Mr. Antonio Beaudouin (deceased) and that Mr. Beaudouin had asked Mr. Ponwaye which Ponwaye family Mr. Ponwaye was from. Mr. Ponwaye claimed that that was the start of his victimisation. Mr. Ponwaye stated that when he did not hear anything after the interview, he called

[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)(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 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. 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* Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, arts. 1, 2, 7, 12.

[3] Hearing No. 169 of Tuesday, 15 June 2021.

and asked, and Mr. Beaudouin told Mr. Ponwaye that he had not been successful. When Mr. Ponwaye asked why, Mr. Beaudouin told him it was "because of politics";

2. The Commission recalls Mr. Ponwaye's evidence that later, he went to the Ministry of Education for an interview and saw a person by the name of Mr. Maxime Renaud (deceased). During the interview, Mr. Renaud had asked Mr. Ponwaye if he was a Ponwaye, and Mr. Ponwaye confirmed that he was, and Mr. Renaud told Mr. Ponwaye that he would have the job and to come the next day. When Mr. Ponwaye came the next day, Mr. Renaud told Mr. Ponwaye that he was too busy, and that Mr. Renaud would contact Mr. Ponwaye when he was ready, but Mr. Ponwaye said that he never did. Mr. Ponwaye later received a letter that he had not been successful in securing the job;

3. The Commission recalls Mr. Ponwaye's evidence that he applied for a taxi licence but that he could not remember which year. He recalled that it was at the time licensing was in the St. Claire building and Mr. Godfrey Bonnelame worked there. Mr. Ponwaye stated that he went and applied and then within three weeks, he had his taxi license and had started to work as a taxi driver. The Commission recalls Mr. Ponwaye's evidence that after nine months, he had to re-apply for his taxi licence, and that his application was approved and that he continued working. After nine months, he had to make another application again;

4. The Commission recalls Mr. Ponwaye's evidence that sometime in December, he was working on the taxi stand, and his was the first car on the rank when another taxi driver Mr. Ponwaye knew well, by the name of "Totor" (deceased), came to the back of the taxi stand. Mr. Ponwaye stated that Totor shouted out, "this Chinese man, it is his last month as a taxi driver";

5. The Commission recalls Mr. Ponwaye's evidence that he did not bother about it, and then one Monday in January, Mr. Ponwaye was parked outside Barclays Bank, when Totor came and said to the taxi drivers parked there that one of them would lose their licence. He said that Maxime Monthy had said that it would be Mr. Ponwaye. Mr. Ponwaye recalled that the other taxi drivers present were Solano Savy, Mr. Delorie (deceased), and Mike, who has left the country. The Commission recalls Mr. Ponwaye's evidence that Mr. Ponwaye did not ask Mr. Monthy how he knew;

6. The Commission recalls Mr. Ponwaye's evidence that his license was due for renewal on 1 February, so Mr. Ponwaye went to apply for another licence, and saw Mr. James Pillay. Mr. Ponwaye informed Mr. Pillay that he needed to renew his license, and Mr. Pillay told Mr. Ponwaye, "take out the taxi sign from your car and stop working". The Commission recalls Mr. Ponwaye's evidence that it was just past noon, and Mr. Pillay told Mr. Ponwaye to come back at 1.00 P.M., and that he would be given a letter;

7. The Commission recalls Mr. Ponwaye's evidence that when he went back at 1.00 P.M., he saw Mrs. Brewer come with a letter in an envelope, and that Mr. Ponwaye read the letter. He said that the President gave no reasons for the non-renewal of his license. Mr. Ponwaye stated that he was not into politics at that time;

8. The Commission recalls Mr. Ponwaye's evidence that he wrote to Mr. Pillay three or four times to appeal his loss of licence, and that he tried to appeal to the President. Mr. Ponwaye stated that then the Tax Office wrote Mr. Ponwaye a letter, stating that Mr. Ponwaye owed the Tax Office three to four months of taxi taxes, which they said he had to pay;

9. The Commission recalls Mr. Ponwaye's evidence that the Tax Office wrote Mr. Ponwaye another letter and asked Mr. Ponwaye to prove that he was not working, so Mr. Ponwaye took his letter of non-renewal of his taxi licence to the Tax Office. He said that the Tax Officer told him to go and see Simone Testa at the Department of Administration, at National House. Mr. Ponwaye stated that he went to National House at about 2.00 P.M. and waited until 4.00 P.M. When Mr. Ponwaye spoke to Mrs. Testa, he told her that he had been trying to see the President about his taxi licence. She informed Mr. Ponwaye that they could not help him, as they did not know about it. Mr. Ponwaye then received a letter from the Department of Administration that had nothing on it, except the letterhead, which Mr. Ponwaye understood to be a message for him to leave them alone;

10. The Commission recalls Mr. Ponwaye's evidence that he could not get another job until roughly 18 months later, when he secured a job as a photographer at Photo Eden, a private company;

11. The Commission recalls Maxime Monthy's evidence, given during his appearance before the Commission on 2 November 2021,[4] that he had been a supporter of the SPUP his whole life, along with his whole family, and that they went to all the SPUP meetings. He stated that Minister Berlouis was like a brother to him;

12. The Commission recalls Mr. Monthy's evidence that he did not recall ever saying what Mr. Ponwaye had attributed to him, and that there were two taxi drivers called Maxime. Mr. Monthy stated that Mr. Monthy also lost his taxi licence for a period, but when he went to see Minister Berlouis, he also saw Albert René and they told him they had made a mistake, and his licence was reinstated. The Commission further recalls Mr. Monthy's evidence that taxi drivers were meant to join the Militia and be spies for the Government, but that Mr. Monthy did neither;

13. The Commission recalls Mr. Solano Savy's evidence, provided in a statement given on 18 December 2019. The Commission recalls that Mr. Savy stated that in 1986 or 1987, he was a taxi operator, and just after New Year's, he and the taxi drivers were sitting between Barclays Bank and the home industry store, talking, when Maxime Monthy told them that one of them was going to lose their licence. Mr. Savy recalled that Francois Ponwaye, Jacob Delorie, and a few others he could not recall were all there. The Commission recalls Mr. Savy's evidence that not long after, Mr. Ponwaye and a few other taxi drivers lost their taxi licences;

14. The Commission recalls Mr. Savy's evidence that Mr. Ponwaye's loss of licence was purely political, and that at the time, "you did not really need to do anything, someone could just go and say that you were against the Government or that you had insulted the President, and it did not mean it was true, they selected their victims". The Commission recalls Mr. Ponwaye's evidence that Mr. Ponwaye's father was a full democratic supporter and that his family suffered a lot;

[4] Hearing No. 218 of Tuesday, 2 November 2021.

15. The Commission recalls that it requested the file of Mr. Ponwaye from the Licensing Authority, but was informed that no records could be located;

16. The Commission recalls Mr. Phillip Revera's evidence that it was President René who had the ultimate authority to decide who would be permitted to retain a license.[5] Mr. Revera stated that while he was employed by the SLA, the Board's decisions on the granting of taxi operator licenses were subject to interference by the President and were often politically motivated. Mr. Revera noted that no avenue for appeal existed once a decision was made;

17. On the basis of the evidence adduced, the Commission finds it established to a balance of probabilities that Mr. Ponwaye was denied opportunities with Radio Seychelles and the Ministry of Education,[6] and was denied the renewal of his taxi licence due to the perception that he was not a supporter of the Government. The Commission notes that after Mr. Ponwaye was denied his taxi license, he struggled to find other employment until he was hired in the private sector. The Commission finds that Mr. Ponwaye was excluded from any opportunities in the public sector, and from operating a taxi, which the Commission views as his chosen field of work, on the basis of his perceived political opinion. The Commission determines that the continued interference with Mr. Ponwaye's employment on those grounds was discriminatory and in contravention of his fundamental right to work and to freedom from discrimination, on the basis of his perceived political opinion,[7] as well as his fundamental rights to freedom of association and assembly.[8] In these circumstances, the Commission is satisfied that Mr. Ponwaye suffered the violation of wrongful denial of the right of employment pursuant to Section 2(8)(i) of the TRNUC Act;

18. The Commission notes the evidence of Mr. Revera, above, and further recalls the evidence of Mr. Willy Confait,[9] that with respect to employment in the public sector, including when it came to licensing, it was President René who determined these matters. As such, the Commission finds that responsibility for this violation is attributed to President René. As President René was acting in his official capacity, his responsibility is also attributed to the State;

19. Further, the Commission finds that even though Mr. Ponwaye had no specific right to a renewal of his taxi license, he did have the above rights to work and to freedom from discrimination, as well as the fundamental rights to equality before the law and freedom from fear of Government abuse, all which are basic principles of human rights law enshrined in the UDHR.[10] In this regard, the Commission finds that the failure of the Seychelles Licencing Authority to assess Mr. Ponwaye's application for renewal in an independent and impartial manner, based on law rather than politics, was in breach of the law. As such, the Commission finds that Mr. Ponwaye suffered the violation of abuse of office under Section 2(8)(l) of the TRNUC Act, for which President René, and by extension the State, bears responsibility;

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[5] Case Determination No. 027: Frank Kilindo, para. 66.
[6] The Commission recalls the evidence of Mr. Ponwaye that he had previously applied for jobs with Radio Seychelles and the Ministry of Education. In interviews at both organisations, he was asked about his family and later denied the position.
[7] UDHR, arts. 2, 23.
[8] *Id.*, art. 20.
[9] *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 employed in the public service, and was created during the colonial times and updated to the Public Service Orders in 1985.
[10] UDHR, arts. 1, 2, 7, 12, 23.

20. The Commission therefore determines on the balance of probabilities that Mr. Ponwaye suffered the following violations: wrongful denial of the right to employment pursuant to Section 2(8)(i) of the TRNUC Act, and abuse of office under Section 2(8)(l) of the TRNUC Act;

21. 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;

22. 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 256.

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