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Case No: 265

The Truth, Reconciliation and National Unity Commission

In the Complaint of Willis Pointe

31 December 2022

Determination on the Complaint of Willis Pointe

Complainant:

Willis Pointe

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

OBSERVING that the complaint of Mr. Pointe, who brings his complaint as a victim, was filed on 28 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 a violation 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] by the Seychelles People's Defence Forces (SPDF), and other acts of a similar character causing suffering or injury to body or to mental or physical health,[3] during the primary temporal period of the mandate of the Commission;

CONSIDERING that these allegations fall within 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, and are thus sufficiently related to the Coup d'état of 1977;

CONSIDERING FURTHER that this allegation concerns one or more violations by the SPDF, an organisation established immediately after the Coup d'état of 1977 to defend the revolution and the party that seized power with the Coup d'état, and which retained its allegiance to the revolution and party thereafter, thus bringing this allegation within the Commission's thematic mandate as well;

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

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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)(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] TRNUC Act, sec. 2(8)(m). The Commission has considered the violation of other acts to be a catch-all provision intended to include any other conduct not immediately defined or covered by the other violations enumerated in the TRNUC Act, and generally contemplates a human rights violation of sufficient significance as to warrant redress. It generally requires 1) the infliction of suffering or injury to body or to mental or physical health, 2) by a perpetrator. The conduct must be sufficiently grave or severe so as to be a cognisable violation of comparable magnitude to the other violations in the Act, such as victimisation by the State that causes physical, mental, economic, or other damage. Among the rights violated in this regard are the customary international law-based rights enshrined in the UDHR. *See* UDHR, arts. 3 (right to life), 4 (prohibition of slavery), 5 (freedom from torture), 7 (equal protection), 12 (protection from arbitrary interference and attacks upon honour and reputation).

within the complaint falls manifestly outside the mandate of the Commission", and that in this case, the Commission rendered the complaint of Mr. Pointe admissible on 25 May 2020;

RECALLING FURTHER that the Commission heard the complaint of Mr. Pointe pursuant to Section 3(3) of the TRNUC Act on 17 September 2021,[4] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

CONSIDERING the investigation by the Commission into this case, 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. Pointe's evidence that he was mistreated for four years when he was in the Seychelles People's Defence Forces (SPDF). Mr. Pointe claimed that after his resignation from the army, he never received any compensation "for all that he had been through";

2. The Commission recalls Mr. Pointe's evidence that in 1979, Mr. Pointe, along with three other soldiers, were sent to what is now Green Estate, to reclaim land in a marshy area to build a road. As the soldiers were collecting soil from Cappucin to take to Green Estate, the driver of the dumper, Guy Pool (deceased), lost control of the dumper truck and ended up in some trees. Mr. Pointe stated that before the dumper crashed and rolled, Mr. Pointe was able to jump off the vehicle and rolled off, ending up in the gutter, at the start of a bridge;

3. The Commission recalls Mr. Pointe's evidence that he was severely injured all over his body and had a laceration on his head. Mr. Pointe recalled that Mr. Pool was killed in the accident, and one of the other soldiers had died from injuries sustained in the accident;

4. The Commission recalls Mr. Pointe's evidence that he was not taken to the hospital, but was treated in the army camp clinic. Mr. Pointe stated that he did not have any broken bones, but he spent about three months in the clinic;

5. The Commission notes that it accessed Mr. Pointe's army file, which recorded that he had joined the SPDF on 20 April 1979, but there is no record on file that Mr. Pointe was involved in an accident in 1979;

6. The Commission notes that it requested access to Mr. Pool's army file to try and ascertain information concerning the accident. However, there was no information relating to the event;

7. The Commission notes that while it had not been able to access any additional evidence about the accident or Mr. Pointe's injuries, it is nonetheless satisfied that this incident was more likely than not an occupational health and safety issue, and not a human rights violation under the TRNUC Act;

[4] Hearing No. 202 of Friday, 17 September 2021.

8. The Commission recalls Mr. Pointe's evidence that between 1979 and 1980, soldiers were taken to Grand Police for training in target shooting. Mr. Pointe stated that the Tanzanian soldiers conducted the training. The Commission recalls Mr. Pointe's evidence that instead of target training, the Tanzanians made the soldiers walk in a mine field that had been prepared, without telling the soldiers where the mines were. Mr. Pointe stated that one soldier, Mirabeau (deceased), lost his leg when he stepped on a land mine; another, Port-Louis, was injured in the groin; and others in the group suffered puncture wounds on their bodies as a result of this exercise;

9. The Commission notes that Mr. Pointe's training record stated that Mr. Pointe attended basic recruit training at the Military Training Camp from 16 April 1979 to 4 August 1979, but there was no record of any further training;

10. The Commission further notes that it accessed a memo dated 13 November 1984, from Timothy Lepathy's army file,[5] which purported to identify compensation payments for the family of deceased or injured personnel, but there was no record of the persons identified by Mr. Pointe on that report;

11. The Commission recalls that it served a suspect notification on Phillipe Lucas, who was the commander of the camp to which Mr. Pointe was assigned and where the alleged mistreatment occurred. Mr. Lucas stated that field training or similar exercises were provided to infantry and conducted by the army headquarters of the Department of OPS and training. Mr. Lucas stated that the training was provided to a combination of infantry soldiers from all the camps and was always conducted by the leadership of platoon commanders, with assistance from the Tanzanian instructors.

12. The Commission finds that even should the recollection of Mr. Pointe of the training that he was made to endure have merit, it has to be accepted that training for military service is often not without risk. Further, the Commission finds that Mr. Pointe himself was not injured by that training, although he may have been mentally impacted if he had in fact witnessed horrific injuries to other soldiers as he claimed. The Commission does note that the land mine training event, if it indeed was as Mr. Pointe described, was unnecessarily dangerous and thus unreasonable as a training technique; had Mr. Pointe been injured in that event, the Commission would have been inclined to find an abuse of office on the part of the SPDF officials who allowed such a training regime, if not the violation of "other acts" under Section 2(8)(m);

13. On the evidence adduced, the Commission is not satisfied that the witnessing of injuries to fellow soldiers during military training, or the training itself without actual injury or suffering, was sufficiently severe as to warrant a finding that Mr. Pointe suffered any violation under the TRNUC Act with regard to these allegations;

14. The Commission recalls Mr. Pointe's evidence that a soldier named Andre Sauzier had stolen money from another soldier, and when Mr. Sauzier was questioned by his superiors, he claimed that he had given the stolen money to Mr. Pointe. Mr. Pointe claimed that the Tanzanian soldiers came to collect Mr. Pointe from the garage, where he was working, and asked him about the money. Mr. Pointe stated that he told the soldiers that he did not know what they were talking about. Mr.

[5] *See* Case Determination No. 110: Timothy Lepathy.

Pointe further stated that the soldiers then took a gunny bag and filled it with sand, placed it on his back, and made him run. Mr. Pointe recalled that it was so heavy that after a few paces, he fell down and then he was beaten;

15. The Commission recalls Mr. Pointe's evidence that the Tanzanians then tied Mr. Pointe and another soldier, Targa, upside-down from a tree and beat them. Mr. Pointe recalled that Targa vomited blood;

16. The Commission recalls Mr. Pointe evidence that Targa then told the soldiers that he, Targa, had taken the money and given it to Botsoie, who was a military driver at the time. Mr. Pointe stated that the Tanzanians then untied him and asked Mr. Pointe to forgive them. The Commission recalls Mr. Pointe's evidence that when the Tanzanians let him down from the tree, he could walk, but he was in pain everywhere;

17. The Commission recalls Mr. Pointe's evidence that Targa died shortly after, and a few days later Mr. Botsoie was seen among the beach morning glory vines at Anse Aux Pins, also dead;

18. The Commission contacted Simon Amade; a nurse Mr. Pointe had claimed looked after his injuries after this incident. Mr. Amade provided the Commission with a statement on 13 July 2022, in which he stated as follows:

> I, Simon Amade state that I joined the army on 20 April 1979 at the age of 13 about to turn 14, I made a false document to join the army because my life at home was uncomfortable. I did my 6 years and my contract ended on 20 April 1985. I'm not in a position to recall everything that happened during that time because it's been 35 years. Maybe if I left more recently I could have been able to give more details but I knew Willis Pointe, we joined the army together on 20 April 1979. Our group was in platoon #10, we were trained at the Point Larue Army Camp and later they sent us to Long Island. At Long Island we were trained by the Tanzanians and I witnessed when Willis was tied hanging upside down (head down) with a Tamarine (sic) tree. This I remember very well and blood came out of his nose but I don't remember what he did that he needed to be tied up. In 1979 when an accident happened, whereby Guy Pool was killed when he lost control of the dumper truck and Willis Pointe was injured, I was on Coetivy Island. I was replacing a medical assistant who had to be on Mahe for a while so I'm more than sure to say that I wasn't the one who attended Willis Pointe in the army camp clinic.
> I also witnessed when a soldier, we called him 'Targa' was punished a lot until he died. That I saw. But I always ask myself this question, why do people take the risk to join the military where you know there are these consequences and when all of that happened you want to make a claim.

19. The Commission contacted Gino Eulentin, who Mr. Pointe had claimed witnessed his mistreatment. Mr. Eulentin provided the Commission with a statement on 12 July 2022, in which he stated as follows:

> I, Gino Eulentin state that I heard Willis Pointe in his hearing at the TRNUC mentioned my name that I witnessed when he was tied upside down to a tree and beaten by the Tanzanian soldiers. I was in the same army unit as Willis but I never witnessed when he was tied upside down to a tree and beaten by the Tanzanian soldiers. I don't meddle in these things. In the army at that time the punishment you got when you make a mistake was to jump (like rabbit) or they give you a bag of sand on your back to run up a mountain. We all went through that but I've never seen a punishment in the army where you are tied upside down to a tree. Willis was involved in many stealing incidents

in the army and maybe that was the reason for him being punished frequently by the Tanzanian soldiers. That's all I can say.

20. The Commission recalls Mr. Lucas's response to the suspect notification served upon him, which, with respect to this part of Mr. Pointe's complaint, stated as follows:

> Concerning solider Pointe, yes, he was at the the (sic) PLC when I took command of the camp. During my time, I have many reports about stealing money, broken lockers and also stealing of uniforms of all the soldiers.
> Following the reports, many times the name of Pointe came up in the stealing affairs.
> Because these are minor offences it is normal for duty officer, RP or MP to issue punishment like carrying your backpacks with soil (NOT BALE!) (sic) push up, running up the hills, also standing against trees and poles with he (sic) hands at he (sic) back for some times. There was no beating baton, I have not witness any soldier being hang in trees whith (sic) their head upside down. This is not true and a big lie.
> During my time, as commander PLC there were only two fatalities (death), one was officier (sic) Guy Pool and private SIMARA.
> They both die in line of duty, the necessary report was made to the headquarter.
> I don't recall any other case.
> I have no knowledge about a serviceman of the name TAGAR
> All service personnel in the arms forces are called by their rank, first name or signature.
> This is the procedure.
> The incident of Mr. BOTSOIE you say it happen at Anse aux Pins, these I can't confirm it did not happen in the PLC camp, he was not on duty therefore it is a police matter to investigate.

21. The Commission notes that Mr. Pointe's army file contained numerous charges for acts prejudicial to good order and discipline, mainly relating to the charge of being absent without leave and being asleep on duty. The recorded punishments were warnings, fines, periods of imprisonment, or extra duties;

22. The Commission further notes charges alleging that Mr. Pointe stole property belonging to the SPDF, namely eight tins of cigarettes, after breaking into the store. The file recorded that Mr. Pointe was found guilty and that his recorded sentence was payment of the cigarettes. On another occasion, Mr. Pointe gave a statement admitting that he had stolen clothes from the General Store on the camp, after breaking into the store through a window. The Commission notes that there was no final sentence sheet on file relating to the punishment for that offence;

23. The Commission recalls that under the Defence Forces Act, Commanders were authorised to discipline soldiers, but the listed punishments did not extend to physical punishment,[6] which Mr. Lucas stated was inflicted for "minor offences". In this case, and given Mr. Amade's corroborative evidence that he had seen Mr. Pointe hanging from a tree, the Commission finds it more likely than not that Mr. Pointe was indeed subjected to the mistreatment he detailed;

24. The Commission finds that the purpose of Mr. Pointe's having been beaten and tied upside-down may have been to obtain information, but that it was not sufficiently severe to meet the threshold

[6] Defence Force (Offences) Act, 1990 (Act 32 of 1980), Second Schedule, Part A, sec. 2.

requirements of torture under the TRNUC Act.[7] However, the Commission finds that the acts above do meet the requirements of Section 2(8)(m) of the TRNUC Act, other acts of a similar character causing suffering or injury to body or to mental or physical health;

25. The Commission recalls Mr. Pointe's allegation that the punishments were served by the Tanzanians soldiers posted with the SPDF. The Commission finds that while the identities of these soldiers are yet unknown, they were clearly operating within the command structure of the SPDF. The Commission notes that the SPDF is a core organ of the State, and thus responsibility is attributed to the State;

26. On the foregoing, the Commission is satisfied that Mr. Pointe suffered the violation of other acts of a similar character causing suffering or injury to body or to mental or physical health of Section 2(8)(m) of the TRNUC Act, with regard to the event during which he was tied to a tree and beaten;

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

28. The Commission finds therefore that the complainant in this case should be awarded compensation 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 265.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

[7] The Commission recalls that it has considered in numerous cases that in the Declaration on the Protection of All Persons from Being Subjected to Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly, the consensus definition of torture requires the act of torture to be "intentionally inflicted... for such purposes as obtaining from [the subject] or a third person information or a confession". U.N. General Assembly, *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 1, 9 December 1975, U.N. Doc. A/RES/3452(XXX). The Commission therefore takes this additional purpose requirement to form part of the first element, concerning intent. The Commission notes an assessment of the purpose for the act(s) comprising torture necessarily implicates an analysis of the perpetrator's state of mind to determine whether the act inflicted was done deliberately to elicit information, to punish, to intimidate or coerce, or for reasons of discrimination. Here, it finds that this element is lacking.

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner