Persévérance, Mahé, Seychelles
Tel: +2484290399 Email: commission@trnuc.sc Website: www.trnuc.sc
P.O Box 5013, Beau Vallon

Case No: 266

The Truth, Reconciliation and National Unity Commission

In the Complaint of Barnsley Winsley Dine

31 December 2022

Determination on the Complaint of Barnsley Winsley Dine

Complainant:

Barnsley Winsley Dine

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Mr. Barnsley Winsley Dine,

OBSERVING that the complaint of Mr. Dine, who brings his complaint as a victim, was filed on 9 August 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 complaint alleged abuse of office[2] by the Commissioner of Police for forcing Mr. Dine to leave the Seychelles Police Force without the payment of gratuity in 1987; the Commission finds that as the allegation falls within the primary temporal mandate of the Commission from the Coup d'état of 1977 until the return to multipartyism in 1993, the claim is admissible before it;

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. Dine prima facie admissible on 15 May 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. Dine on Tuesday 8 September 2020,[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. Dine's evidence that he joined the Police Mobile Unit (PMU), commonly known as the "gard baté (beating police)", in 1980, under the command of Mr. Andre Kilindo. Mr. Dine lived at the barracks at Mont Fleuri;

---

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

[3] Hearing No. 100 of Tuesday, 8 September 2020.

2. The Commission recalls Mr. Dine's evidence that a constable was getting married and he was invited to the wedding, which was on 9 May 1987. Mr. Dine stated that he, Mr. Kilindo, and a number of other police officers also attended, all of them garbed in civilian clothes for the occasion;

3. The Commission recalls Mr. Dine's evidence that he wanted to have a cigarette, and he went outside to have one, but realised he did not have a lighter. Mr. Dine stated that he saw Mr. Kilindo sitting there in his civilian clothes, so Mr. Dine stood in front of Mr. Kilindo and asked to borrow his lighter. Mr. Dine claimed that Mr. Kilindo responded, saying "What did you say? Is that a way to approach me?". Mr. Dine stated that he replied that it was the correct approach, as they were in civilian clothes, but Mr. Kilindo then told Mr. Dine to "get out" or Mr. Kilindo would slap him. Mr. Dine claimed that he moved back, whiskey in hand, but Mr. Kilindo stood up and repeated that he would slap Mr. Dine. Mr. Dine stated he responded saying that he would slap Mr. Kilindo back;

4. The Commission recalls Mr. Dine's evidence that Mr. Kilindo then hit Mr. Dine's glass. Mr. Dine stated that he saw two empty bottles on the ground, and was going to grab them to hit Mr. Kilindo in his frustration. At this point, other police officers held Mr. Dine back, and Mr. Kilindo said "Put this black man in jail". Mr. Dine stated that he was then taken by the other officers to Mont Fleuri Police Station;

5. The Commission recalls Mr. Dine's evidence that Mr. Kilindo "used his contacts" to put Mr. Dine in jail, and once he was placed in a cell, he was given a mattress. He recalled that the police officer on duty contacted his wife to bring him some clothes. Mr. Dine recalled that his wife brought some coffee for him, and that Mr. Dine did not sleep, but just sat in the cell. Mr. Dine stated that at around 6.00 A.M. or 7.00 A.M., a police officer came and took Mr. Dine back to the camp;

6. The Commission recalls the statement of Mrs. Regina Esparon, a guest at the wedding, provided on 4 July 2022, in which she stated as follows:

> I do not recall the exact date or year, but I remember very well that it was during the wedding celebration of Mr. Carosin and Pharisienne Adrienne which was held at the La Moutya Restaurant, (present day Chilli Bar Restaurant). Winsley and I were invited as well as Mr. Andre Kilindo who was the head of PMU at the time. We were all invited since we all stayed at the police quarters, in fact, we were all neighbours.
>
> I remembered that I was sitting outside when all of a sudden there was a commotion and so I rushed inside to check what had happened. I could hear Winsley and Mr. Kilindo exchanging words, but I was not sure what it was about. I soon learned from the other invitees that Mr. Kilindo had slapped Winsley in the face and so Winsley retaliated and hit him back.
>
> Shortly after, Mr. Kilindo called the police, and Winsley was detained at the Mont Fleuri Police for two days. He was later released and learned that he had been dismissed from the police force with immediate effect. I guess he lost everything in terms of gratuity payments after what happened that night.

7. The Commission recalls Mr. Dine's evidence that when he reached the camp following his release, all the police were gathered, including Mr. Kilindo. Mr. Dine stated that as soon as he got in, Mr. Kilindo asked Mr. Dine, "you know what you did last night?", to which Mr. Dine responded saying,

Mr. Kilindo had made trouble because Mr. Kilindo had hit Mr. Dine's glass and then had Mr. Dine put in jail. The Commission recalls Mr. Dine's evidence that he told Mr. Kilindo that he, Mr. Dine, was going home, which Mr. Dine did;

8. The Commission recalls Mr. Dine's evidence that at around 10.00 A.M., a constable came and told him that there was a phone call for him. Mr. Dine recalled that it was the man who had got married, and he asked Mr. Dine to go his place, as people were still there from the night before. Mr. Dine stated that he went there and had a drink, but then left because he did not feel comfortable, so Mr. Dine went to his mother's house at Anse Aux Pins;

9. The Commission recalls Mr. Dine's evidence that that night, the police had come to call him to go on shift, but that he had not been home as he had been at his mother's place. Mr. Dine claimed that when he returned to the barracks at Mont Fleuri, a jeep came, and the officers inside told Mr. Dine to come with them and to go to work, but Mr. Dine refused. Mr. Dine stated that he had decided that he would not work with Mr. Kilindo again, and he wanted a transfer;

10. The Commission recalls Mr. Dine's evidence that the next day, he was again asked to go to work, and again he said "No", as he wanted a transfer. Mr. Dine stated that he gave his request for a transfer to Mr. Kilindo. Mr. Dine claimed that he had gone to see the Commissioner of Police, but the Commissioner tore up his transfer request;

11. The Commission notes that Mr. Dine's police file did not record any transfer request at this time, potentially reflecting the Police Commissioner's alleged tearing up of the request. The Commission does recall a letter on Mr. Dine's file, dated 6 April 1987, requesting a transfer from PMU to the Seychelles Fire Brigade, and a response of 9 April 1987 denying the request, but the Commission notes that it appears that this transfer request was made prior to the incident at the wedding, which had occurred on 9 May 1987, and so is irrelevant to the claim at hand;

12. The Commission recalls Mr. Dine's evidence that he was called to go to work yet again, and he refused to do so. Mr. Dine stated that he had all of his equipment from the police at his home, and that when the police realised that he still had his weapons, they asked him to give his gun and all the bullets back to them, and he did so. Mr. Dine stated that he then decided that he was not going to work again, and instead went to Praslin for a holiday;

13. The Commission recalls Mr. Dine's evidence that one day while in Praslin, he was sitting at Grand Anse, when a policeman approached and asked Mr. Dine whether a policeman lived at his home. Mr. Dine stated that he informed the officer that Mr. Dine had come for a holiday, and the policeman told Mr. Dine that Mr. Kilindo had called and said to tell Mr. Dine that he had to remove his things from the police barracks or they would be thrown away. The Commission recalls Mr. Dine's evidence that he told the policeman to tell Mr. Kilindo that he had resigned;

14. The Commission recalls Mr. Dine's evidence that when he resigned, prior to leaving for Praslin, he had gone to Central Police Station to ask for his gratuity, but his file could not be found. Mr. Dine stated that he was told to go to National House, and that his file was found under the name Barnsley when he used the name Winsley;

15. The Commission recalls Mr. Dine's evidence that he was told he would not be paid gratuity for his seven years of service, so he went to see the Commissioner of Police. Mr. Dine claimed that the Commissioner told Mr. Dine that it was his own fault, so Mr. Dine then went to State House and asked to see James Michel, but instead he saw Dobin Samson. Mr. Dine stated that Mr. Samson told him to go and see the Commissioner of Police, but as Mr. Dine had already done so, he did not go back to the Commissioner;

16. The Commission recalls Mr. Dine's evidence that the police "lost" his resignation letter and instead made up that he was terminated for misconduct, in order to deny Mr. Dine his gratuity benefits;

17. The Commission recalls a letter on Mr. Dine's employment file from Mr. Dine to the President, dated 9 July 1987, asking for an appointment and advising that Mr. Dine had a problem with his work and had been through the proper channels, but was not satisfied with the answer;

18. The Commission recalls that the above letter was annotated with a note asking the Commissioner of Police whether he knew what it was about. Further, there was a report on Mr. Dine's file, prepared by Mr. Kilindo and addressed to the Commissioner of Police, dated 28 July 1987, which stated as follows:

> Following a quarrel at the Mont Flueri (sic) Police Married quarters where the latter lives involving himself, his wife, PS Victor and wife, he was called upon and offered to transfer his house from Mont Flueri to Petit Paris camp in order to avoid further similar and more serious problems.
>
> Dine categorically refused the offer and said that he was not in a position to vacate the Mont Flueri quarters for Petit Paris because PS Victor and his wife will think that he was scared of them. He later applied for a transfer from PMU to Fire Brigade which same was turned down.
>
> The quarrel with PS Victor continued on the 29th April, 1987 when around 5.30 pm whilst I was at home, Dine came to me in an aggressive mood and started shouting by stating the following words "la mon pe bez al touy Victor ek son fanm, zot in bez bles mon fanm ek boutey". I tried to calm him as I noticed that he was very aggressive but he did not seem to cooperate and listen to my advice. Though I tried to refer him to Inspector Gill who was then incharge of Mont Flueri Police Station where he would make his complaint and have his problem solved. He ignored same (sic) and told me the following "Gill osi I bez menm konplis I pou donn rezon son serzan". I warned him that he was going too far and acting in an undisciplined manner towards his superior. He then left and said "fer sa ki ou oule".
>
> The following day I called him in my office and he was admonished for his misbehaviour towards his superior officer. Again I tried to convince him to accept the transfer of house from Mont Flueri to Petit Paris so that the quarrel between the Victors and himself will be solved. He again refused. On the 9th May, 1987, during a private function at La Moutia Restaurant where some PMU personnel including myself and Dine (sic). At around 11.30 hours while I was talking to some of the guests outside, I heard a voice shouting "Kilindo" upon turning to see who was calling me, I saw Dine coming towards where we were standing. We were all surprised; I then asked him if he was out of his mind, he replied saying "Pret mwan zalimet". I told him that if he really wanted same (sic), he should have been more polite than that. I pointed out to him that he was looking for trouble, there he started insulting me by using obscene words. I ordered the PMU personnel who were present to lock him up at Mont Flueri Police Station as he was under the influence of drinks.

> Lastly, on the 10th May 1987, he did not turn up for duty, and 11th, I inquired from the NCO of his whereabouts and reasons for not reporting to camp for duty. I was informed that Dine had said that he was not interested in coming back for duty. Disciplinary action was taken against him and he was recommended for dismissal from the Force.

19. The Commission notes that Mr. Dine's employment file evidenced that he was absent from duty without leave or permission and that he was charged and pleaded guilty on both counts. The file further noted that the panel hearing the case recommended that he be dismissed from the force on 13 May 1987;

20. The Commission notes that a letter, dated 21 August 1987, addressed to Mr. Dine and sent on behalf of the Commissioner of Police, advised Mr. Dine that the President had "thoroughly looked into" his case and that there was nothing the President could do to help him;

21. The Commission notes that a letter on file, dated 21 August 1987, addressed to Mr. Dine and sent on behalf of the Commissioner of Police, advised Mr. Dine that he was dismissed from the police with effect from 16 August 1987;

22. In light of the above, the Commission finds that Mr. Dine was terminated from his role with the PMU, having been found guilty of disciplinary offences. The Commission notes that the Commissioner of Police was empowered to punish any police officer where he is satisfied that a disciplinary offence has been proved.[4] The punishments include, *inter alia,* dismissal from the Force, with or without forfeiture of all pay due.[5] Further, the Commission notes that Section 47 of the Police Force Act states that no gratuity is to be paid to any police officer on termination.[6] The Commission therefore finds that Mr. Dine's termination was on balance lawful, and it is thus not satisfied that the facts have established any violation of human rights under the TRNUC Act;

23. 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;

24. The Commission finds therefore that as the complainant in this case has not established any violation of human rights, no reparations are due.

Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 266.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson G. McIntyre

[4] Police Force Act, 1959, Cap 172, sec. 36(1).
[5] *Id*, sec. 36(1)(d).
[6] *Id*, sec. 47.

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner