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Case No: 274

The Truth, Reconciliation and National Unity Commission

In the Complaint of Bernard Underwood

31 December 2022

Determination on the Complaint of Bernard Underwood

Complainant:

Bernard Underwood

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

OBSERVING that the complaint of Mr. Underwood, who brings his complaint as a victim, was filed on 27 December 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 wrongful termination of employment,[2] wrongful denial of the right to employment,[3] and forced exile,[4] all acts falling within the primary temporal mandate of the Commission from the Coup d'état of 1977 until the return to multiparty in 1993 and are thus 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. Underwood prima facie admissible on 29 January 2020;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard Mr. Underwood's complaint on 13 March 2020,[5] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

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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)(i). The Commission has considered the violation of wrongful denial of the right to employment to include a 1) repeated refusal to hire, promote, otherwise interfere with or refuse a person 2) in pursuit of employment in that person's chosen field, 3) for reasons other than business necessity or some other reasonable and articulable basis 4) by a perpetrator. As with the violation of wrongful termination, this violation applies equally to dismissal of employment from either the public or private sector and is a fundamental violation of an individual's rights "to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". UDHR, art. 23(1).

[4] TRNUC Act, sec. 2(8)(k). The Commission considers that forced exile involves 1) the expulsion, deprivation of access to re-enter, or removal of a national from his or her country 2) unlawfully or arbitrarily through either direct deportation or expulsion or by making living conditions unbearable for the national to stay in the country due to ongoing or potential persecution, victimisation, violence, or other difficulties, 3) by a perpetrator. The violation of forced exile is fundamentally a violation of the customary rights freedom of movement and to re-enter one's country. *See* UDHR, arts. 9 (freedom from arbitrary exile), 13 (freedom of movement and right to return to one's country).

[5] Hearing No. 60 of Friday, 13 March 2020.

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. Underwood's evidence that his wife's father, Olaf Monthy, was detained until early 1980, as he had been the driver and bodyguard of the ex-Minister for Finance, Mr. Chammery Chetty. The Commission recalls Mr. Underwood's evidence that both his and his wife's family were "democratic families", and as a result, they were often followed by State Security operatives during the time of the one-party State;

2. The Commission recalls Mr. Underwood's evidence that he was working at Aviation Seychelles Ltd, now Air Seychelles, and that in 1980, Claude Moulinie started to work at the airport.[6] Mr. Underwood and Mr. Moulinie became good friends. The Commission recalls Mr. Underwood's evidence that around 1982, Mr. Moulinie's parents left for South Africa and later, Mr. Moulinie left Seychelles to join them. Mr. Underwood stated that Mr. Moulinie and his father left Seychelles because they were being followed and harassed. Mr. Underwood stated he continued to live his life in Seychelles, even though he continued to be watched and followed;

3. The Commission recalls Mr. Moulinie's evidence that in October 1982, Mr. Underwood saw Mr. Moulinie's name on the passenger manifest, and Mr. Underwood went to meet Mr. Moulinie, and then decided to lend Mr. Moulinie his car. The Commission recalls Mr. Underwood's evidence that the following afternoon, Mr. Moulinie told Mr. Underwood that he had come to Seychelles to carry out a mission with Simon Desnousse and Mike Asher. Mr. Underwood said he had convinced Mr. Moulinie to abort the mission, and that if he had not done so, Mr. Moulinie would have met the same fate as Mr. Desnousse and Mr. Asher;[7]

4. The Commission recalls Mr. Underwood's evidence that after Mr. Desnousse and Mr. Asher's death, "the hell started" for his family because of his known association with Mr. Moulinie. Mr. Underwood claimed that car S1122 was always parked near their home, and that his family was under 24/7 surveillance;

5. The Commission recalls Mr. Underwood's evidence that Mr. Moulinie was taken to State House and was interviewed by Mrs. Geva René and Mr. Ibrahim Afif, and that Mr. Moulinie's confessions were recorded and aired on the radio program called "Konplo 412". He recalled that Mr. Moulinie was made to ask for forgiveness on the radio, and that Mr. Moulinie ended up leaving Seychelles for exile in the United Kingdom;

6. The Commission recalls Mr. Underwood's evidence that one night, he was at the Katiolo nightclub, when the mother of the owner of the Katiolo told Mr. Underwood that Mr. Underwood's father had called and said he would send a taxi to pick Mr. Underwood up. Mr. Underwood considered this to be strange, as his father did not know where he was. The Commission recalls Mr. Underwood's

[6] *See* Case Determination No. 273: Claude Moulinie, in Volume III.
[7] *See* Case Determination No. 022: Olivia Vincent, in Volume III.

evidence that when he went outside, he saw Coup participant, Phillip D'Offay standing outside, smoking a cigarette, and that he was alarmed and went back inside and told his friends. Mr. Underwood's friends said that it was better that they leave, and they then escorted Mr. Underwood home;

7. The Commission recalls Mr. Underwood's evidence that in 1985, his wife's relatives left for England due to anonymous and threatening phone calls, and because they were being followed and watched;

8. The Commission recalls Mr. Underwood's evidence that in 1985, he was still working at the airport, overseeing the loading of planes, and he had moved to cargo to get a promotion. He said that he went to see the manager, and the manager told Mr. Underwood that he could not get a promotion because his file had been sent to State House and they came back with a negative response. The manager told Mr. Underwood to leave before they fired him, and so he resigned;

9. The Commission recalls the evidence received in numerous other cases that persons suspected of being against the Government would be terminated by the public service, and that once terminated, all benefits accrued would be forfeited. However, if a person resigned, they would be entitled to what was owed to them in the way of pensions and other benefits;

10. The Commission recalls that it accessed Mr. Underwood's employment file from the Department of Public Administration, but that file contained no record of Mr. Underwood concerning his employment with Aviation Seychelles. It did, however, contain records of Mr. Underwood's application to Seychelles Petroleum Company, to which was attached a Curriculum Vitae which recorded that Mr. Underwood worked for Aviation Seychelles from 3 March 1978 until 28 February 1986, and that from 5 March 1986 until 8 March 1996, he was employed by the United States Embassy in Seychelles. The Commission notes a certificate of service on file for 10 years with the United States Embassy in Seychelles, and that Mr. Underwood was then appointed to Seychelles Petroleum Company Limited, effective 1 April 1997. The Commission notes that the reason provided by Mr. Underwood for leaving Aviation Seychelles was to get a better position, and the reason for leaving the United States Embassy was due to its closure in Seychelles;

11. The Commission notes that Mr. Underwood's employment file contained a grant of security clearance, dated 16 October 1996, for Seychelles Petroleum Company;

12. The Commission finds that Mr. Underwood's resignation from Aviation Seychelles Ltd was forced and wrongful, and, as it followed the denial of his promotion by State House, which considering the evidence heard in other cases, was more likely than not motivated by the perception that Mr. Underwood was against the Government that had taken power with the Coup d'état of 1977, was similarly politically motivated. The Commission thus finds that this termination was discriminatory and in contravention of his freedom from discrimination on the basis of his perceived political opinion, as well as his fundamental rights to freedom of association and assembly.[8] Thus, the

[8] UDHR, arts. 2, 20.

Commission is satisfied that Mr. Underwood suffered the violation of wrongful termination under Section 2(8)(j) of the TRNUC Act;

13. The Commission recalls the evidence of Willy Confait, given in reference to another case,[9] that at the time in question, it was President René who determined employment, promotion, and termination in the public service. As such, the Commission finds that President René bears perpetrator status for this violation. Further, as President René was acting in his official capacity, responsibility is attributed to the State;

14. The Commission recalls Mr. Underwood's evidence that he managed to find employment at the U.S. Embassy through his friend who worked there, Nicholas Banks, whom one of Mr. Underwood's colleagues was dating. Mr. Underwood claimed that Mr. Banks told Mr. Underwood that they had a vacancy. Mr. Underwood was successful in getting the position, but after about one month, the rest of his family, including his father-in-law, decided to emigrate to England, where they remained until 1994;

15. The Commission recalls that it sought to clarify with Mr. Underwood whether he exiled from Seychelles to which he clarified that he never went into exile, however, other members of his family had;

16. The Commission therefore is not satisfied that Mr. Underwood suffered the violation of forced exile, under Section 2(8)(k) of the TRNUC Act, further it has not received sufficient evidence regarding his extended family to make a definitive determination on the claims of his extended family that left Seychelles;

17. The Commission finds that Mr. Underwood suffered the following violations: wrongful termination of employment pursuant to Section 2(8)(j) of 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 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 274.

[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 in the public service, and was created during the colonial times and updated to the Public Service Orders in 1985.

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