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Case No: 297

The Truth, Reconciliation and National Unity Commission

In the Complaint of Flavien Lablache

31 December 2022

Determination on the Complaint of Flavien Lablache

Complainant:

Flavien Lablache

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

OBSERVING that the complaint of Mr. Lablache, who brings his complaint as a victim, was filed on 14 January 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 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 Department of Public Administration for transferring him from the Seychelles Police Force to Seychelles Public Transport Company on political grounds in 2007;

CONSIDERING that these allegations fall outside 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, but that as the human rights violations alleged are said to have been committed by Government authorities aligned with the Party that came to power through the Coup d'état, and motivated on political grounds due to Mr. Lablache's affiliation with the opposition, they fall within the Commission's thematic mandate and are thus sufficiently related to the Coup d'état of 1977 to be admissible before the Commission;

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 that in this case, the Commission rendered the complaint of Mr. Lablache prima facie admissible on 8 January 2021;

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. Lablache on Monday 17 May 2021,[3] 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;

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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 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, and that these rights may be violated when a Government official abuses the power of their office. *See* International Covenant on Civil and Political Rights [ICCPR], arts. 2, 14, 17, 16 December 1966, 999 U.N.T.S. 171. The Commission also reaffirms the customary international law status of these rights. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, arts. 1, 2, 7, 12.

[3] Hearing No. 154 of Monday, 17 May 2021.

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. Lablache's evidence that on 3 May 1988, he was employed as an account technician in the Seychelles Police Force. Mr. Lablache recalled that Anthony Camille was the Commissioner of Police when Mr. Lablache joined, and that Mr. Camille was then followed by Raymond Louise, Andre Quilindo, and then Gerard Waye-Hive. Mr. Lablache stated that Commissioner Waye-Hive had been an army officer who was transferred to the police force, to be Commissioner in 2006;

2. The Commission recalls Mr. Lablache's evidence that in 1997, Mr. Lablache was promoted to the position of Accountant in the Police Force, and in May or June 2007, the Police Force was discussing a revision to the scheme of service of the police. Mr. Lablache stated that he prepared points for the new scheme of service, and that as an accountant, he considered that he had a role to play in the development of the scheme. However, when the list of people that would be on the Committee to develop the new scheme of service was published, his name was not included, and he thought that Commissioner Waye-Hive must have made a mistake not to include his name;

3. The Commission recalls Mr. Lablache's evidence that in June 2007, he received a call from Commissioner Waye-Hive, who advised Mr. Lablache that Mrs. Jessy Esparon from the Department of Public Administration wanted to see him at her office at National House. Mr. Lablache stated that when he arrived there, Mrs. Esparon told Mr. Lablache that he was being transferred to Seychelles Public Transport Authority to be an internal auditor, and that Mr. Lablache responded that he had not requested a transfer. Mr. Lablache claimed that Mrs. Esparon then told Mr. Lablache that he had "been with the police for too long", and if he did not want to transfer to SPTC, then he would have to resign;

4. The Commission recalls Mr. Lablache's evidence that he asked Mrs. Esparon who was going to replace Mr. Lablache at the police, and Mrs. Esparon informed him that no one had been selected yet. Mr. Lablache then proposed that his Assistant Accountant should be given the position;

5. The Commission recalls Mr. Lablache's evidence that there was nothing in the Public Service Orders that said if a person had been in a position for a long time then they would have to be transferred. Mr. Lablache stated that the next day, he saw Commissioner Waye-Hive and asked him if he knew that Mr. Lablache was being transferred. Mr. Lablache claimed that the Commissioner told Mr. Lablache that he was aware of the transfer, that it was Mrs. Esparon's doing and not the Commissioner's, and that it was to do with politics because Mr. Lablache was not supporting the party;

6. The Commission recalls Mr. Lablache's evidence that two or three days later, he saw the former Commissioner Andre Qulindo, who was an advisor in the President's Office and based at Bel Eau. Mr. Lablache claimed that Mr. Quilindo told Mr. Lablache that he heard that Mr. Lablache was being transferred. Mr. Lablache stated that he confirmed it to Mr. Quilindo, and further told Mr. Quilindo that Commissioner Waye-Hive had said it was because of politics. Mr. Lablache stated that Mr. Quilindo responded that Mr. Lablache did not do politics, and Mr. Lablache told Mr. Quilindo that "to destroy someone in Seychelles, just pretend it's politics";

7. The Commission recalls Mr. Lablache's evidence that Mr. Quilindo said that he would discuss the matter with President Michel, and he gave Mr. Qulindo his letter of transfer, which specified no reasons for the transfer. Mr. Lablache claimed that three to four days later, Mr. Quilindo saw the President and told him that Commissioner Waye-Hive had said the transfer was due to politics and that President Michel had supposedly told Mr. Quilindo that he did not know what Mrs. Esparon was doing in regards to politics. Mr. Lablache stated that Mrs. Esparon was under the authority of the President, however, so President Michel must have known;

8. The Commission notes that Mr. Lablache provided the Commission with a copy of his transfer letter, dated 31 July 2007, which informed of the transfer but provided no reasons for it;

9. The Commission recalls Mr. Lablache's evidence that the police force received their money directly from the treasury into their bank account, and that the police "had their own way" of dealing with their finances. Mr. Lablache claimed that when Commissioner Waye-Hive was transferred from the SPDF to be the position of Commissioner of Police, Mr. Lablache had heard that Commissioner Way-Hive was still being paid by the SPDF, while he was also being paid by the Police Force. Mr. Lablache claimed that he then confirmed that Commissioner Waye-Hive was still being paid by the SPDF from the person responsible for the payroll at the SPDF, and that person had asked the Chief of Staff of the SPDF whether Commissioner Waye-Hive should be removed from the SPDF payroll. Apparently, the Chief of Staff did not respond. The Commission recalls Mr. Lablache's evidence that they did not "make a payroll" for Commissioner Waye-Hive at the police, but that he knew that Commissioner Waye-Hive was receiving two salaries prior to the decision to transfer Mr. Lablache;

10. The Commission recalls Mr. Lablache's evidence that he continued to work with the Police Force for an additional month, and then on 1 August 2007, he was transferred to SPTC. Mr. Lablache claimed that as he left the police station, he was followed by two Special Branch officers until he reached the premises of SPTC. Mr. Lablache stated that he believed that they were making sure that he reported to SPTC and that they would make a report that he had done so;

11. The Commission recalls Mr. Lablache's evidence that he was transferred on the same salary to SPTC. He claimed that the transfer was just to "get rid of him from the police" because he was not affiliated with the Government, and because he did not agree with the Government in power, even though he claimed he did not show this lack of support. Mr. Lablache stated that at the police station, all the people in the posts from Director upwards had to show affiliation by "putting your t-shirt on" and "show that you are supporting the Government". Mr. Lablache claimed that if one showed one's colours in support of them, then one would get promoted, not because the promotion was deserved but because of one's political affiliation;

12. The Commission recalls Mr. Lablache's evidence that he was moved to work at a parastatal organisation. He claimed that if a person was a public servant, they could not be transferred to a parastatal organisation. He claimed that one would have to resign from the public service and then join the parastatal. But at that time, he said, the Government had the power so they did whatever

they wanted. Mr. Lablache claimed that this was according to the Public Service Orders and that a parastatal did not form part of the Government;[4]

13. The Commission recalls Mr. Lablache's evidence that within three days of his departure from the police, he was replaced by Linda Monthy, who had been working for Employment and Social Affairs. Mr. Lablache stated that he believed that if he was being transferred, his Assistant should have been given priority with the police to replace him. Mr. Lablache alleged that the post had not been advertised, however, and Ms. Monthy had been handpicked to take the position. Mr. Lablache stated that he discovered that Ms. Monthy was a very good friend of Mrs. Esparon, and when Ms. Monthy left the Ministry of Employment and Social Affairs, she had been an Assistant Accountant, and was made an Accountant when she arrived to work for the police. Mr. Lablache alleged that according to the Public Service Orders, she should have been placed on probation for three months. Mr. Lablache further alleged that when Ms. Monthy took his position, she received the same pay that he had been receiving after 19 years of service, but that she received it on immediate assignment;

14. The Commission recalls Mr. Lablache's evidence that he left SPTC after four to five years because he was not happy there;

15. The Commission recalls that it called Mrs. Jessy Esparon to respond to Mr. Lablache's complaint, and that she appeared before the Commission on 10 November 2021.[5] The Commission recalls Mrs. Esparon's evidence that President Michel asked Mrs. Esparon to transfer Mr. Lablache to another organisation, and that she had asked President Michel to speak to the Commissioner of Police. Mrs. Esparon recalled that the President called Commissioner Waye-Hive and then Mrs. Esparon was meant to follow up;

16. The Commission recalls Mrs. Esparon's evidence that she then called Commissioner Waye-Hive and the Commissioner spoke to Mr. Lablache. Mrs. Esparon stated that she knew of a vacancy at SPTC for the post of auditor that SPTC needed to fill immediately, so she called Mr. Gappy at SPTC and asked Mr. Gappy if he would take Mr. Lablache, and he agreed;

17. The Commission recalls Mrs. Esparon's evidence that the person who replaced Mr. Lablache, Linda Monthy, had been working at the Ministry of Employment and that she had wanted a move. Mrs. Esparon stated that she had known Ms. Monthy to be a good accountant, but that she was not a good friend of hers as claimed; Mrs. Esparon stated that she only knew her as a good worker;

18. The Commission recalls Mrs. Esparon's further evidence that President Michel did not tell her why Mr. Lablache was to be transferred and that she did not question him. Mrs. Esparon claimed that she told Mr. Lablache that he had been 19 years with the police and he should look at the transfer

[4] The Commission notes that the Public Service Order 1996, sec. 3, defines "Parastatal organisation" as "[...] an organisation which is not an integral part of Government, but which includes an institution, organisation or agency which is wholly or partly financed or owned and controlled by Government". Further, PSO, sec. 50(1)(f) is an express provision which envisions a procedure for an employee to be transferred between Ministries, Departments, and parastatal organisations.

[5] Hearing No. 224 of Wednesday, 10 November 2021.

positively. Mrs. Esparon stated that she did not deal with political matters; she only dealt with administrative matters;

19. The Commission recalls Mrs. Esparon's evidence that at that time, people could transfer from the public service to the parastatals as they were still on a Government contract, but they still needed Government approval. Mrs. Esparon stated that it was in 2009 that parastatals were given autonomy, and the PSO in 2009 stopped transfers from the public service to parastatal organisations. However, at the time Mr. Lablache was transferred in 2007, transfers from Government to parastatal organisations were permitted by the PSO;

20. The Commission notes that Mrs. Esparon provided the Commission with a copy of the revised Delegation of Authority framework for Commercial Parastatals, dated October 2009, which at paragraph 12 granted "[f]ull delegation of authority to undertake the management of public administration issues without having to request authority to act from the Department of Public Administration", and according to paragraph 14, "delegation of authority extended to the organisation and establishment, salary structure, staff movement, terms and conditions of service, expatriate employment and scheme of service";

21. The Commission recalls Mrs. Esparon's evidence that the allegation that Mrs. Monthy received a higher salary than Mr. Lablache when transferred was not true. She stated that Mr. Lablache was on a higher salary, and when he was transferred, he maintained that same salary;

22. The Commission recalls the evidence of Mrs. Esparon that there was no provision in the PSO for anyone to object to a transfer, and that in the public service, rotation was a normal practice. Mrs. Esparon further stated that there was no evidence that Mr. Lablache objected to the transfer, and that if Mr. Lablache had objected to working at SPTC, then SPTC would have found another place for him;

23. The Commission recalls that it called former Commissioner of Police Waye-Hive, and that he appeared before the Commission on 21 September 2021.[6] Mr. Waye-Hive at that time denied that he ever told Mr. Lablache that his transfer was political. He stated that Mr. Lablache needed to remember that during this time, the Ministry of Finance introduced the idea of rotation, and a lot of people were rotating positions. Mr. Waye-Hive stated that he himself had just been told that after 19 years with the police, Mr. Lablache would be transferred, and that he was transferred to SPTC;

24. The Commission recalls Mr. Waye-Hive's evidence that he did not believe the transfer was political because Mr. Lablache had been working for the police for 19 years and was transferred to another Government entity with the same salary;

25. The Commission recalls that it accessed Mr. Lablache's employment file, which verified his transfer, with the same salary, with effect from 1 August 2007. It moreover recorded that Mrs. Esparon had spoken to Mr. Lablache on 25 July 2007 and that he had agreed to the transfer to SPTC;

[6] Hearing No. 204 of Tuesday 21 September 2021.

26. The Commission thus finds that Mr. Lablache was indeed transferred from his position with the Police Force to the SPTC in 2007. The Commission notes that Mr. Lablache alleged that his transfer was politically motivated; however, the Commission does not accept this to be established on the facts of this case. In this regard, the Commission recalls that there was no evidence, other than that of Mr. Lablache, to support such a claim. Further, the Commission highlights that parastatal organisations did form part of the public service at the relevant time, and that the PSO in effect did allow employees of the public service to be transferred without reason, or necessarily requiring the approval of the employee. As regards Mr. Lablache's allegations regarding the terms of Ms. Monthy's employment, the Commission declines to make any findings on the matter as the terms of employment of a third party are not relevant to the Commission's mandate to determine the case of Mr. Lablache as the victim before it, nor are they relevant to the previous holder of the position. The Commission is not satisfied that the facts have established any violation of human rights under the TRNUC Act resulting from Mr. Lablache's transfer to SPTC;

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 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 297.

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