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Case No: 302

The Truth, Reconciliation and National Unity Commission

In the Complaint of Patrick Folette

31 December 2022

Determination on the Complaint of Patrick Folette

Complainant:

Patrick Folette

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

OBSERVING that the complaint of Mr. Folette, who brings his complaint as a victim, was filed on 16 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 Ministry of Lands for denial of the right to purchase State land in 1998 due to his political affiliations;

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. Folette'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. Folette prima facie admissible on 24 August 2020;

RECALLING FURTHER that the Commission heard the complaint of Mr. Folette pursuant to Section 3(3) of the TRNUC Act on Monday 21 April 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. 144 of Wednesday, 21 April 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. Folette's evidence that in 1998, he made an application at the Bel Air District Administration Office to purchase a plot of State land from the land bank. Mr. Folette recalled at that time, everyone was allowed to have two to three pieces of land, and he already had a house and land, but had sold it. Mr. Folette stated that he then made an application to the land bank and waited for five years, but received no response;

2. The Commission recalls Mr. Folette's evidence that he left Seychelles in 1993, and in early 2005, he had returned permanently. Mr. Folette said that he went to the Lands Department to follow up on his earlier land application, and was told that he was on a waiting list and that he had priority. Further, he was told that if he saw a piece of vacant land, he should advise the Ministry so that his application could proceed;

3. The Commission recalls Mr. Folette's evidence that he subsequently identified a number of pieces of vacant land, but that each time he was told that the land belonged to a private owner and that his request to purchase the plot could not be considered by the Ministry;

4. The Commission recalls Mr. Folette's evidence that on 27 August 2012, he applied for housing assistance from the Government, and was enrolled in the Home Savings Scheme. Pursuant to that Scheme, he began to pay the mandatory 10% of his monthly household income into the Scheme and in exchange, the Ministry made a commitment to help him find a property;

5. The Commission notes a letter on his file dated 12 October 2012 and addressed to Mr. Folette from the Housing Finance Company Ltd, which stated in part as follows:

   > We are happy to note that you have made this very important decision to state (sic) contributing to your home.
   >
   > Please be advised that until such time a **commitment** is made by Ministry of Land Use & Housing to assist you, you shall remain a client of the said Ministry.

6. The Commission recalls Mr. Folette's evidence that he was still not allocated a property, and in 2016, he met with the Minister of Lands about the issue but to no avail;

7. The Commission recalls Mr. Folette's evidence that then, in 2019, when he filled in all the forms for the point system to be eligible for the allocation of land, he was informed by the Ministry of Lands that he was not eligible because he already owned a plot of land, and that his file was being closed;

8. The Commission recalls Mr. Folette's evidence that he had sold his land in 1998, and that he had been renting a house at the time he made his application. Mr. Folette claimed that the decision to render him ineligible for a plot of land was "pure victimisation" because he had been waiting for 21 years and by that point he had contributed SR 60,000 into the Homes Saving Scheme;

9. The Commission recalls that it called Bernadette Boniface, the Director for Land Acquisition and Sales in the Ministry of Lands, and she appeared before the Commission on 14 October 2021.[4] The Commission recalls Mrs. Boniface's evidence that there had been changes with respect to the allocation of land from the Government land bank, and that in 2018, a land point system was introduced;

10. The Commission recalls Mrs. Boniface's evidence that prior to the introduction of the new system, it was the District authorities who set the priorities in terms of the allocation of land, as the District Administration was best placed to know their constituents. Mrs. Boniface said that the District Administrator would set the master list of all applicants based on the form filled in by the applicants, and set the priority of the applicants. This list would then be sent to the Ministry of Lands. Mrs. Boniface recalled that if an applicant went directly to the Ministry of Lands with their application form, it would be sent to the District Administrator so that the District Administrator could set the priority. Mrs. Boniface stated that the Ministry of Lands would do due diligence and check if an applicant already had land;

11. The Commission recalls Mrs. Boniface's evidence that there were no enumerated criteria for the District Administrator to follow in setting the priority list, and most of the land in the land bank was land that had been acquired by the Government from big landowners. Mrs. Boniface stated that land bank land was sold cheaply by the Government, often below market value, and a lot of plots were sold at half their market value;

12. The Commission recalls Mrs. Boniface's evidence that in 2018, there were concerns regarding the allocation of State land in terms of fairness and transparency, so the Government made a decision to review the allocation of land to bring fairness to the process. Mrs. Boniface recalled the decision was made to remove the District Administrator from having a determinative role; under the new policy, applicants were allocated points based on seniority: the older the application, the more points the application would receive. The Commission notes that a threshold of 75 points had apparently been set to establish eligibility for the approval of an application;

13. The Commission recalls Mrs. Boniface's evidence that applicants must show that they had the financial ability to both pay for the land and construct a house. Mrs. Boniface recalled that there was no time frame in which an applicant would be given a plot; rather, it depended on the availability of the land, and required the infrastructure for water and electricity to be in place;

14. The Commission recalls Mrs. Boniface's evidence that Mr. Folette had a land file with the Ministry, and that on 8 January 1998, the Ministry had received a letter from Mr. Folette's ex-wife, offering the sale of their land with a house, P6496, in exchange for a residential plot of land. Mrs. Boniface stated that Mr. Folette's ex-wife owned the property with him, and she wrote the letter in her own name, but was also representing Mr. Folette. Mrs. Boniface stated that on 23 January 1998, Mr. Folette's ex-wife lodged a land bank application in her own name only;

15. The Commission recalls Ms. Boniface's evidence that on 8 April 1998, Mr. Folette's ex-wife informed the Ministry that Mr. Robby Felicie was the legal representative of the owner of Parcel

[4] Hearing No. 216 of Thursday, 14 October 2021.

P6496, and he was the fiduciary authorised to see the property. Mrs. Boniface recalled that on 24 December 1998, Mr. Felicie sold the property to a private owner;

16. The Commission recalls Ms. Boniface's evidence that Mr. Folette then wrote to the Ministry of Lands and requested to purchase a remainder parcel at La Gogue, which was rejected on 27 February 2012. Ms. Boniface stated that the land bank application had been made by Mr. Folette's ex-wife and he was relying on that as his application; however, Mr. Folette was not prioritised for the allocation of land;

17. The Commission notes a letter on the land file, dated 15 September 2005, from the District Administrator of Bel Eau to the Ministry of Lands with respect to Mr. Folette's application to purchase the above land at La Gogue, advising as follows:

> Mr. Folette's application has not been considered a priority due to the fact that he has been absent from the country for several years. He has just returned this year.
>
> Therefore is (sic) parcel number H3207 is vacant and to be sold I recommend it be allocated to Mr Donald Samynadin whose name appears second on the last district priority list.
>
> Please be informed that Ms. Nichole Dine who is number one will be considered for a plot in the district.
>
> However Mr. Folette's case will be considered a priority in the near future alongside other applicants.

18. The Commission recalls Mrs. Boniface's evidence that in February 2012, Mr. Folette requested to be given a house at Perseverance, and the Lands Department referred Mr. Folette's application to the Housing Department, but that Mr. Folette did not pass the threshold of 75 points to be eligible for the allocation. Mrs. Boniface claimed that his application had been given due consideration by the Minister for lands;

19. The Commission recalls Mrs. Boniface's evidence that in March 2019, Mr. Folette filed in a form to be allocated land from the land bank, but that he was deemed ineligible and that he appealed that decision. Mrs. Boniface claimed that he was ineligible because he had owned property before and sold it privately, which meant that he was removed from the list as one of the criteria was that an individual must not have owned property;

20. The Commission recalls Ms. Boniface's evidence that Mr. Folette's case was not closed completely and that it was not with the Department of Housing; she stated that his case was still ongoing;

21. The Commission notes a letter on file, dated 19 March 2021, addressed to Mr. Folette from the Ministry of Habitat, Infrastructure and Housing, informing him of approval in principle to allocate to him a two-bedroom housing unit at Perseverance;

22. The Commission notes that Mrs. Boniface provided the Commission with documents verifying the evidence that she gave, including the fact that the original application to be allocated land from the

land bank in 1998 had been made by Mr. Folette's wife. The Commission notes in that regard the evidence on file that Mr. Folette and his former wife were divorced in 2004;

23. While on the evidence adduced, the Commission appreciates Mr. Folette's frustrations with respect to the non-allocation of land to him, the Commission cannot find on the evidence adduced that the non-allocation was based on politically discriminatory grounds or was otherwise abusive of governmental authority. Further, the Commission notes that there is no human right to be allocated Government land, and as such, the Commission finds that there is no human rights violation by Government officials in not accommodating this request;

24. The Commission is thus not satisfied that the facts have established any violation of human rights under the TRNUC Act, resulting from Mr. Folette's compliant;

25. 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;

26. 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 302.

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