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Case No: 303

The Truth, Reconciliation and National Unity Commission

In the Complaint of Weston Wirtz

31 December 2022

Determination on the Complaint of Weston Wirtz

Complainant:

Weston Wirtz

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

OBSERVING that the complaint of Mr. Wirtz, 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 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 kidnapping,[2] and abuse of office[3] by military and authorities in 1998, a time period that falls outside the primary temporal mandate of the Commission but as the abuses were allegedly carried out by the Seychelles Peoples Defence Forces, an institution established by and fully aligned with the Government that took power with the Coup, the Commission is satisfied that its thematic mandate is met;

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. Wirtz was deemed prima facie admissible on 18 August 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. Wirtz on 12 April 2021,[4] 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;

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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)(f). The Commission notes that the violation of kidnapping constitutes the following elements: (1) the taking of a person through force or fraud (2) by means of a deprivation of liberty without consent (3) for the purpose of (a) removing a person from Seychelles, (b) removing the person from guardianship, or (c) otherwise done with malicious intent, (4) by a perpetrator. The Commission has found that the violation of kidnapping impacts a victim's rights to liberty, security of person, and recognition before the law, as well as other due process rights, and may amount to an arbitrary arrest and/or detention in breach of Article 9 of the UDHR. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, art. 9 (freedom from arbitrary arrest, detention or exile). *See also* Chapter XXV – Offences Against Liberty of the Seychelles Penal Code (1955), which lays out the offences that amount to a kidnapping.

[3] 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* UDHR, arts. 1, 2, 7, 12.

[4] Hearing No. 137 of Monday, 12 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. Wirtz's evidence that he had been an instructor at Seychelles College and that in 1998, a friend and past-student of his had been picked up by the military authorities. Mr. Wirtz called Bel Eau and asked for the number of Mr. Robert Ernesta, the military officer in charge of operations at Grand Police, in order to ascertain what happened to his friend;

2. The Commission recalls Mr. Wirtz's evidence that he called Mr. Ernesta and spoke to him about the person they had arrested, and Mr. Ernesta confirmed he was being held at Grand Police. Mr. Wirtz stated that he told Mr. Ernesta that the person was not involved in politics, he was involved in business, and thus it made no sense that he had been arrested. Mr. Wirtz claimed there was a lot of jealousy in Seychelles and people were jealous of success, and Mr. Ernesta understood this. Mr. Ernesta then had the person released;

3. The Commission recalls Mr. Wirtz's evidence that one week, after he had managed to secure the release of his friend, another person, who was residing with Mr. Wirtz and who was under his care, also went missing. Mr. Wirtz recalled that he ascertained that this person was not at any of the Police Stations, so he tried to call Mr. Ernesta to find out whether the missing man had been taken to Grand Police;

4. The Commission recalls Mr. Wirtz's evidence that when Mr. Ernesta did not take his call, Mr. Wirtz decided to go to Grand Police with his girlfriend to try to find Mr. Ernesta and ask about the missing person. Mr. Wirtz claimed that when he arrived at Grand Police, the soldier on the gate informed him that the person he was looking for was inside the compound and had not been beaten yet, but would be beaten at 8.00 P.M. He said that Mr. Ernesta was not there;

5. The Commission recalls Mr. Wirtz's evidence that he went to a restaurant near Mr. Ernesta's home, Jerry's Restaurant, and told his girlfriend to go and have a drink, and then decided to go to Mr. Ernesta's home to try to secure the release of the person. When he arrived at Mr. Ernesta's home, Mr. Wirtz said he looked through the window and saw someone, but he stated that Mr. Ernesta was not at home. The Commission recalls Mr. Wirtz's evidence that four soldiers then jumped on him and shoved him into a military vehicle, and took him to the beach at Anse Intendance;

6. The Commission recalls Mr. Wirtz's evidence that once they arrived at Intendance, the soldiers took Mr. Wirtz out of the vehicle and began to stomp on him with their military boots, kicking him in his stomach and ribs. Mr. Wirtz stated that he believed the soldiers were going to kill him and that he would have to fight back, and while he was being beaten, Jeffrey Marie was standing by with a firearm outside the vehicle;

7. The Commission recalls Mr. Wirtz's evidence that just in time, Mr. Marie received a phone call and he heard someone say, "what are you doing". Mr. Marie responded, "the kids are beating him", and then heard the person, whom Mr. Wirtz identified as Mr. Ernesta, say, "don't do that, pick him up". The Commission recalls Mr. Wirtz's evidence that the soldiers tried to clean him up and that they "felt a bit guilty" as they had been given an order not to beat him, and that he was disorientated and weak, and they took Mr. Wirtz back to the restaurant where he had been earlier;

8. The Commission recalls that it served Mr. Marie with a suspect notification, which Mr. Marie responded to on 26 July 2022, in which he stated as follows:

> I Jeffrey Marie would like to state that I was working at Grand Police and following a report regarding Mr. Weston Wirtz I did not go with the soldiers to look for Weston Wirtz and I did not participate in the beating of Weston Wirtz.
>
> It was Mirabeau who did all the work for Robert Ernesta.

9. On the basis of Mr. Marie's statement, the Commission sought a response from Francis Mirabeau. Mr. Mirabeau responded by way of a written statement on 26 July 2022, and stated as follows:

> I Francis Mirabeau will confirm that I did not participate in any beating regarding Weston Wirtz. Ask Ernesta who did he send (sic) to beat Weston and tell him do not use my name because I have come to TRNUC and said everything that I did but this one I did not participate.

10. The Commission recalls Mr. Wirtz's evidence that when they arrived back at the restaurant, Mr. Ernesta was there and apologised to Mr. Wirtz for the actions of the soldiers. Mr. Wirtz stated that he asked for his forgiveness. The Commission recalls Mr. Wirtz's evidence that Mr. Ernesta then escorted Mr. Wirtz to Cascade, and the following day, Mr. Wirtz was hospitalised, suffering with aches all over his body. He said that he did not tell the doctors that he had been beaten by the army, as "this could have triggered something";

11. The Commission recalls Mr. Wirtz's evidence that he did not know why the soldiers beat him, but that at the time he had put his candidature for the SNP party;

12. The Commission recalls Mr. Ernesta's evidence, who appeared before the Commission at the same time as Mr. Wirtz,[5] that on the night of the incident, Mr. Ernesta had received a call from his 6-year-old daughter who had told him that there was a man outside. Mr. Ernesta stated that he lived near the Le Reduit restaurant at Takamaka, and that when he received the call from his daughter, he called his friends and told them that someone was outside his house and asked them to go and have a look;

13. The Commission recalls Mr. Ernesta's evidence that the people he called found Mr. Wirtz, took him from the location, and beat him. Mr. Ernesta recalled that at that time, the SPDF were doing operations to clean up the Seychelles, picking up bandits and locating weapons and drugs, and Mr. Ernesta did not understand why in that context Mr. Wirtz would have gone to his home, where he had his children;

14. The Commission recalls Mr. Ernesta's evidence that when he called to find out more, he learnt that Mr. Wirtz had been picked up near his house, and the soldiers told Mr. Ernesta they were "correcting him" and that he ordered them to stop the beating. Mr. Ernesta stated that he took responsibility for the beating of Mr. Wirtz;

[5] Hearing No. 137 of Monday, 12 April 2021.

15. The Commission recalls that Mr. Wirtz stated that he was ready to forgive Mr. Ernesta for the incident;

16. The Commission finds it established from the evidence adduced that Mr. Wirtz suffered the violation of kidnapping under Section 2(8)(f) of the TRNUC Act. In that regard, the Commission finds it established that Mr. Wirtz was taken by force from the premises of Mr. Ernesta's residence, where Mr. Wirtz was evidently just waiting, having looked through a window, not doing any criminal act that he could legitimately be arrested for. As Mr. Wirtz was subsequently taken to Anse Intendance and beaten, the Commission finds that the purpose of the taking of Mr. Wirtz was more likely than not malicious, in order to cause him harm;

17. The Commission additionally finds that the subsequent beating of Mr. Wirtz by the soldiers amounted to an abuse of office under Section 2(8)(l) of the TRNUC Act. In that respect, the Commission recalls that the soldiers had not been instructed to beat Mr. Wirtz, and that he was not acting violently, resisting, or doing anything else to merit such a physical response by the soldiers. As such, the Commission finds that the actions of those soldiers clearly strayed from the law and were done arbitrarily;

18. The Commission finds that while the identities of the four soldiers who kidnapped and beat Mr. Wirtz have not been confirmed, it is more likely than not that Mr. Ernesta and the soldiers under his command bear responsibility for the above violations. It recalls that although no explicit orders to beat Mr. Wirtz may have been given to the soldiers, it is reasonable to assume, given the climate at the time and beatings that soldiers routinely carried out, that having seen Mr. Wirtz at Mr. Ernesta's residence, an order to the soldiers to apprehend Mr. Wirtz could also foreseeably result in his beating. The Commission further recalls that Mr. Ernesta took responsibility for both of these events. As such, it accords Mr. Ernesta perpetrator status;

19. The Commission notes that members of the SPDF undertook the beatings in their official capacity, and as such, the Commission finds that responsibility is also attributed to the State;

20. The Commission recalls Mr. Wirtz's evidence that he had a 51% share in a business with an expatriate exporting fish, and one day as he entered the business office, he saw that the office equipment was missing and his business partner was sitting in his chair. His business partner asked Mr. Wirtz whether he had ever been involved with the military, and asked whether the police had ever picked up Mr. Wirtz in regard to explosives;

21. The Commission recalls Mr. Wirtz's evidence that he told his business partner that Police Commissioner Pillay had once picked Mr. Wirtz up and interviewed him about explosives, but that that was the end of the matter. The Commission recalls Mr. Wirtz's evidence that explosives was on the curriculum for Form 5 science, and that all the kids knew how to do dynamite and explosives. Mr. Wirtz said he had been told that bombs were being put everywhere;

22. The Commission recalls Mr. Wirtz's evidence that his business partner told Mr. Wirtz that they had to close the business because of this matter, and Mr. Wirtz was aware of the matter of explosives he was referring to. That event concerned an incident involving a prominent person's brother who had called Mr. Wirtz on one occasion and asked whether Mr. Wirtz was planning to kill the

President, and he had advised that he was not. The Commission notes that Mr. Wirtz declined to provide the Commission with any further details in that regard;

23. As regards this allegation, the Commission finds that no violation under its mandate has been established on the facts adduced;

24. Therefore, the Commission determines that Mr. Wirtz suffered the following violations: kidnapping under Section 2(8)(f) of the TRNUC Act, and abuse of office by a Government official under Section 2(8)(l) of the Act;

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

26. 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 303.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson G. McIntyre

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner