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Case No: 316

The Truth, Reconciliation and National Unity Commission

In the Complaint of Jane Naiken

31 December 2022

Determination on the Complaint of Jane Naiken

Complainant:

Jane Naiken

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Ms. Jane Naiken,

NOTING that the complaint of Ms. Naiken, who brings her complaint as a victim, was filed on 20 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,[1] the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977, and that the complainant alleged other acts causing suffering or injury to mental health,[2] as a result of her work as a nurse during the night of the Coup d'état, and thus during 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;

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 Ms. Naiken prima facie admissible on 22 April 2020;

RECALLING that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard the complaint of Ms. Naiken on 13 July 2021,[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 Ms. Naiken's evidence that she was a nurse and was on night duty on 4 June 1977. Ms. Naiken stated that after she had done her rounds, at around 11.45 P.M. to 12.00

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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)(m). The Commission has considered the violation of other acts to be a catch-all provision intended to include any other conduct not immediately defined or covered by the other violations enumerated in the TRNUC Act, and generally contemplates a human rights violation of sufficient significance as to warrant redress. It generally requires 1) the infliction of suffering or injury to body or to mental or physical health, 2) by a perpetrator. The conduct must be sufficiently grave or severe so as to be a cognisable violation of comparable magnitude to the other violations in the Act, such as victimisation by the State that causes physical, mental, economic, or other damage. Among the rights violated in this regard are the fundamental rights to life, liberty and security of person prohibition of slavery, freedom from torture, equal protection of the law, and protection from arbitrary interference and attacks upon honour and reputation. International Covenant on Civil and Political Rights [ICCPR], arts. 6-9, 14, 17, 16 December 1966, 999 U.N.T.S. 171. The Commission notes that these are also rights at the level of customary international law. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217 (III), 10 December 1948, arts. 3-5, 7, 12.

[3] Hearing No. 176 of Tuesday, 13 July 2021.

A.M., she heard a disturbance on the ground floor of the ward, including several men saying "be quick, remove him quickly". She stated that as she approached to see what was going on, Ms. Naiken saw several men armed with guns wearing camouflage uniforms, arguing with one another. Ms. Naiken claimed that she listened in order to try to ascertain what was happening, and tried to calm the patients who were afraid;

2. The Commission recalls Ms. Naiken's evidence that while she was trying to calm the patients, she could hear something moving towards her, and that there was usually an empty bed next to the office, but that night there was one security officer on duty. Ms. Naiken's stated that Mr. Onezime was the security guard on duty then, and that he helped the men in camouflage bring in the man and place him on the bed. Ms. Naiken claimed that the patient was unconscious and that she tried to give him oxygen, but part of his brain was coming out of the side of his head as he had been shot in the head. Ms. Naiken recalled that when the Doctor arrived, he confirmed that the man had passed away;

3. The Commission recalls Ms. Naiken's evidence that the patient had been wearing a uniform which was unfamiliar to her, like that of a soldier, and that she placed a dressing on his head. She recalled that liquid was seeping out of the brain and she packed the part of his brain that was coming out back into his head; when she looked at his face, she realised that the man was Francis Rachel, who had lived close to her mother at Mont Plaisir, Anse Royale;

4. The Commission recalls Ms. Naiken's evidence that she found 10 to 12 bullets in Mr. Rachel's pocket, and that he had two rounds of rope around his waist. She recalled that Mr. Rachel had only one nylon sandal on one of his feet, and that all items were removed from his body;

5. The Commission recalls Ms. Naiken's evidence that she attended to Mr. Rachel as a nurse, and that they covered the body. Then, as per the procedure, they waited one hour and then transported the body to the mortuary;

6. The Commission recalls Ms. Naiken's evidence that the other men who had come with Mr. Rachel had already left, but those in the hospital could hear them outside. Ms. Naiken stated that she was scared about what had happened;

7. The Commission recalls Ms. Naiken's evidence that she finished her shift that morning, and then she learnt there had been a coup. Ms. Naiken was transported home in an ambulance as a curfew was in place. She recalled that she was then asked to go back for a double night shift at the hospital, which she accepted;

8. The Commission recalls Ms. Naiken's evidence that this was the first time she had witnessed such an incident, and that the whole experience made her afraid and worried. She stated that she thought the soldiers might kill her, and that as a nurse, witnessing armed men wearing camouflage uniforms entering the hospital with dead people traumatised her;

9. While the Commission accepts that the above events, particularly in the context of an armed Coup d'état, would likely have been startling for Ms. Naiken, it is not satisfied that the threshold of suffering was sufficiently severe, on par with the violations in the TRNUC Act, so as to constitute the violation of other acts under Section 2(8)(l) of the Act. The Commission further notes that

although it was alleged that Ms. Naiken suffered an injury to her mental health, no medical or psychological records were provided to establish such an injury. The Commission therefore finds on the balance of probabilities that no violation of human rights under the TRNUC Act has been established on the evidence received;

10. 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;

11. 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 316.

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