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Case No: 336

The Truth, Reconciliation and National Unity Commission

In the Complaint of Richard Young

31 December 2022

Determination on the Complaint of Richard Young

Complainant:

Richard Young

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

OBSERVING that the complaint of Mr. Young, who brings his complaint on behalf of his deceased mother, Josette Young, was filed on 22 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 unlawful imprisonment or other deprivation of physical liberty of his mother,[2] within the primary temporal mandate of the Commission from the Coup d'état of 1977 until the return to multipartyism in 1993, and is 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. Young prima facie admissible on 9 September 2020;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, the Commission heard the complaint of Mr. Young on 15 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:

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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)(b). The Commission considers that the violation of unlawful imprisonment or other deprivation of physical liberty consists of 1) an arrest, detention, imprisonment, or other deprivation of one's physical liberty 2) executed unlawfully, arbitrarily, or without due process 3) by a perpetrator. The Commission notes that the term "detention" corresponds to the state of being under police or State custody for any amount of time, whereas "imprisonment" references being detained specifically as the result of a conviction. Hence, the "detention" prong falls into the broader "other deprivation of physical liberty" provision of Section 2(8)(b) of the TRNUC Act. This violation stems from a violation of the fundamental rights to personal liberty and to due process of law, among others, which are at the status of customary international law. *See* Universal Declaration of Human Rights [UDHR], G.A. Res. 217A (III), 10 December 1948, arts. 3, 7, 9, 10.

[3] Hearing No. 178 of Thursday, 15 July 2021. The Commission notes that the admissibility decision erroneously characterised the nature of Mr. Young's complaint as also alleging human rights violations against him in the denial of the opportunity for career advancement but Mr. Young's statement and his evidence before the Commission established that this was not an allegation made.

1. The Commission recalls Mr. Young's evidence that his mother was outspoken and would speak her mind and she had been a big supporter of James Mancham. Mr. Young stated that after the Coup d'état of 1977, his mother would openly criticise President René's regime, telling members of the Government that she did not approve of it, and that what was going on in the country under their reign was wrong;

2. The Commission recalls Mr. Young's evidence that they lived at Sans Souci and that to get to their home, they had to go through a security gate. He recalled that his mother would always be stopped and her car searched at that gate, and that she would become very angry. When she arrived at her home, she would telephone Dr. Ferrari and/or Minister Berlouis and she would swear at them and tell them off;

3. The Commission recalls Mr. Young's evidence that one night when his mother was coming home from work, she failed to stop at a Militia checkpoint, and the guards fired at her vehicle and two bullet holes were visible in the back of her car. Mr. Young recalled that at the time there was another person in the car with his mother, and that the other person's father was a high-ranking army official. When Mr. Young's mother reached her home, she phoned this high-ranking army official and told him to come and collect his daughter, and when the high-ranking military official got to his mother's house, Mr. Young's mother and the high-ranking military official's daughter explained to the official what had happened and the official was very angry. He went to the Militia checkpoint and had the Militia arrested by the military;

4. The Commission recalls Mr. Young's evidence that his mother was detained pursuant to a Detention Order made under Regulation 2 of the Preservation of Public Security (Detention) Regulations 1978 issued by President René, on the basis the President had formed the opinion that Josette Cooper's[4] detention was necessary as she had recently been concerned "in acts, which might [...] be prejudicial to the public safety and maintenance of public order, or in the preparation or instigation of such acts";

5. The Commission recalls Mr. Young's evidence that at the time of his mother's detention in 1979, Mr. Young was in boarding school in the United Kingdom, where he had gone to avoid going to the National Youth Service (NYS). He recalled that his mother spent approximately three weeks in a prison cell and then three weeks in hospital under army guard after catching pneumonia while she was in prison. The family were not even permitted to visit her in hospital;

6. The Commission recalls Mr. Young's evidence that he was unaware at the time that his mother had been detained because he spoke with his family only once a month from the United Kingdom, but he learnt about it when he was due to come back to Seychelles for holidays. He stated that his guardian in the United Kingdom told him not to go because of what was going on, and he then spoke to his father, who informed him that his mother was detained;

7. The Commission recalls Mr. Young 's evidence that he was affected by this news and that he recalled the Headmaster of his school calling Mr. Young's father and asking that Mr. Young be permitted to return to Seychelles. His father then agreed, and when he returned to Seychelles, he wanted to see his mother. He said his father thus went to see Dr. Ferrari, who was then a Minister

[4] Josette Young; Cooper was her married name.

in the Government, and his father told Dr. Ferrari that the children wanted to see their mother. Dr. Ferrari responded, "leave her there, its time she learnt her lesson";

8. The Commission recalls Mr. Young's evidence that the reason why his father went to see Dr. Ferrari was because Mr. Young's mother and Dr. Ferrari's wife were first cousins, and Mr. Young's mother was actually the godmother to Dr. Ferrari's child, Jean Francois Ferrari;

9. The Commission recalls Mr. Young's evidence that his mother was eventually released when Dadi Michel (deceased), who was a supporter of President René, went to see the President and told him that Mr. Young's mother was his daughter born out of wedlock. That was when their family found out who their mother's father was;

10. The Commission recalls that it received a list of persons detained in November 1979, prepared by Mr. Ayub Suleman Adam, and that Josette Young's name appeared on that list;

11. On the basis of the above and considering its findings in other cases concerning the November 1979 detentions,[5] the Commission finds that no genuine investigation was carried out by the police to ascertain whether there was any evidentiary basis for Mrs. Young's detention. Further, the Commission finds it more likely than not, based on the trend at the time as evidenced in other cases before it, that Mrs. Young was not accorded any of her due process rights, including the right to legal counsel, or being brought before a court within a reasonable time. Further, the Commission has received no evidence that Ms Young was brought before the Detention Review Tribunal within 30 days as its establishing Act provided;[6]

12. The Commission finds on a balance of probabilities that Mrs. Young thus suffered the violation of unlawful imprisonment or other deprivation of physical liberty with respect to her detention of approximately six weeks, under Section 2(8)(b) of the TRNUC Act, for which President René, and by extension the State, bears responsibility;

13. The Commission recalls the evidence of Mr. Young that in the mid 1980s, his mother left Seychelles and went to South Africa for a combination of reasons, including her divorce from his father and because she did not like what was happening in the country, but she came back when her mother was "getting on". She then returned to South Africa after her mother had passed;

14. The Commission recalls Mr. Young evidence that his mother bought a flat in the United Kingdom near where Mr. Young went to school, and she would come and stay there. He recalled that they

[5] *See* for example, Case Determination No. 002: Lewis Betsy; Case Determination No. 005: Carlette Ball; Case Determination No. 17: Paul Chow.

[6] The Commission recalls the Detention Review Tribunal Decree of 1978 provided for such procedural safeguards including legal review within 30 days of the commencement of detention. Detention Review Tribunal Decree (Cap. 62), 19 May 1978. The Commission finds that the failure to bring Mrs. Young before the Detention Review Tribunal as required by law and his denial of his right to counsel were violations of his rights under the Detention Review Tribunal Decree. Further, the Commission considers that even had Mrs. Young been brought before the Detention Review Tribunal as he should have been, the protection offered by that body would still have been insufficient due process, as the Tribunal could only recommend that a detainee be released and had no power, as an independent court presumably would have, to order the release of Mrs. Young. *See* Case Determination No. 003: Daniel Auguste.

would return to Seychelles during the school holidays. On one occasion, Mr. Young and his mother were arrested when they returned and taken to Central Police Station;

15. The Commission recalls Mr. Young's evidence that he and his mother were taken to separate rooms and strip-searched, and that his father was going crazy outside. His father called the lawyer Kieran Shah to come and represent his mother, and Mr. Shah was kicked out of the police station by Commissioner Pillay and they were released after six hours;

16. The Commission recalls Mr. Young's evidence that he and his mother had travelled via Nairobi on Kenya Airways, and that they had bumped into Kathleen Mason and her husband. He said that Mrs. Mason was his mother's half-sister and that she told Mr. Young's mother not to go back to Seychelles; his mother said that she had to, and then it was when they arrived in Seychelles that they were picked up;

17. On the basis of the above, the Commission finds that Mr. Young and his mother suffered the violation of abuse of office[7] with regard to their arrest and strip-search on arrival in Seychelles on the occasion in question, recounted above. The Commission finds that no evidence has been adduced before it that any charges or reasons were given to Mr. Young and his mother for the arrest and detention at Central Police Station, which it notes would give rise to another instance of the violation of unlawful imprisonment; however, due to the very brief nature of the detention, the Commission cannot find that they suffered that violation under the facts at hand. Instead, the Commission considers that it was more likely than not, an abuse of the governmental authority of the police to effect an arrest and strip-search of two citizens arriving home from abroad, which the Commission reiterates was apparently done without any legal basis. As such, the Commission finds that Mr. Young and his mother suffered the violation of abuse of office, for which the unidentified police officers effectuating the arrest, and by extension the State, bear responsibility;

18. On the basis of the above, the Commission finds that Mrs. Young suffered the violations of unlawful imprisonment or other deprivation of liberty on two occasions pursuant to Section 2(8)(b) of the TRNUC Act; and that Mr. Young and his mother suffered the violation of abuse of office by a Government official under Section 2(8)(l) of the TRNUC Act;

19. 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;

20. 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

[7] 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.

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 336.

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