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Case No: 423

The Truth, Reconciliation and National Unity Commission

In the Complaint of Astride Durup

31 December 2022

Determination on the Complaint of Astride Durup

Complainant:

Astride Durup

I. ADMISSIBILITY

1. The following determination is made pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission (TRNUC) Act, 2018, which provides that the Commission shall make decisions and recommendations. The determination is in accordance with the mandate of the Commission as set out in Section 3(3) of the Act "to receive complaints in respect of alleged violations, to gather, collate and analyse information and evidence with respect thereto, and to make decisions". Pursuant to Section 2(8) of the Act, a violation means a human rights abuse committed during or in relation to the Coup d'état of 5 June 1977, and includes a non-exhaustive list of enumerated acts.[1]

2. Prior to the investigation of a complaint, pursuant to Rule 25(1) of the Commission's Rules of Procedure and Evidence ("Rules"), adopted by the Commission pursuant to Section 8(1) of the Act, the Commission must satisfy itself that the complaint is admissible before it for determination. To be admissible before the Commission, a number of criteria must be satisfied as outlined below.

3. Pursuant to Section 3(4) of the TRNUC Act, a complaint shall be filed within six months of the Commission's commencement of mandate, and pursuant to Section 3(5), a complaint may be filed by a victim, a representative of a victim, or a close surviving relative of a deceased victim. The mandate of the Commission commenced on 9 August 2019. To be admissible, complaints must have been filed on or before 9 February 2020.

4. The complaint of Astride Durup was filed on 9 February 2020. Consequently, the complaint satisfies the admissibility requirements of Sections 3(4) and 3(5) of the TRNUC Act.

5. Pursuant to Section 2(8), the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977. Section 2(8), subparagraphs (a) to (m), identifies a non-exhaustive list of acts falling within the definition of a violation of human rights. The requirement that a complaint be related to the Coup d'état of 1977 requires the Commission to establish that there is an alleged connection between the allegation and the Coup d'état of 1977. Pursuant to Rule 25(2) of the Rules, a complaint "[…] will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission". The threshold for admissibility to be granted is low, though a complaint deemed by the Commission to be admissible may later be deemed inadmissible following investigation.

6. The complainant alleged abuse of Government power, claiming victimisation on political grounds as a result of her affiliation with the opposition party. The complainant claimed in particular that she was excluded from benefitting from Government land policies under which land was purportedly acquired for the benefit of the Seychellois people, and that while she made an application to purchase

[1] "[…] (a) unlawful killing; (b) unlawful imprisonment or other deprivations of physical liberty; (c) torture; (d) rape; ()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"].

Government land in 1994, that application was never granted. The complaint alleged that instead, in 2016, she was allocated a "prefab" house that was infested with termites.

II. PROCEDURAL HISTORY

7. Satisfied that the complaints alleged human rights violations relating to the Coup d'état of 1977, the Commission determined the case of the complainant prima facie admissible on 22 May 2020.

8. Having deemed the case prima facie admissible, on 22 May 2022, the Commission commenced its public hearings in relation to the case of the complainant on 11 November 2021.[2] The Commission heard the complainant and accessed relevant documentary evidence.

III. EVIDENCE RECEIVED

A. Evidence of Mrs. Durup

9. During her appearance before the Commission on 11 November 2021, Mrs. Astride Durup alleged that she was a resident of Mont Buxton and that about six years ago, she was allocated a "prefab" house (prefabricated or modular home) at Perseverance, where she currently resides. She stated that while during the one-party system the Government compulsory acquired land to benefit the people of Seychelles, she was denied any such benefit. She stated that she made an application for a piece of land about 25 years ago and she believed she should have been allocated a normal plot of land on which to build her own house. Instead, she said that she was living in a prefab that was infested with termites. She informed the Commission that she had always been a strong opposition supporter and she attended several opposition rallies, which were sometimes dispersed by the police. She believed that she was victimised for her affiliation with the previous opposition, and it was due to that affiliation that her land/house application did not result in the allocation of any Government land to her. Rather, she repeated that it took 25 years for her to be allocated any housing assistance.

B. Housing File

10. To ascertain the veracity of Mrs. Durup's complaint, the Commission requested access to the housing file of Mrs. Durup on 19 January 2021 from the Ministry of Lands and Housing. On 2 March 2021, the Commission was advised that the Ministry was trying to locate the housing file and would provide it to the Commission once located. Receiving no further communication or the file, the Commission requested updates from the Ministry on 5 November 2021, and again on 12 November 2021. On 12 November 2021, the Commission was again informed that the Ministry was still trying to locate the file and once it had been located it would be forwarded to the Commission.

11. On 8 February 2022, the Commission again sought an update from the Ministry regarding the file. On 9 February 2022, the Commission was advised that the file had been located and was with the Property Management Company (PMC), and that the file would be made available to the Commission by PMC once they had finished with it.

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[2] Hearing No. 225 of Thursday 11 November 2021

12. On 12 May 2022, well over a year from the making of its original request in January 2021, the Commission finally received the file that had been requested. The evidence on the file "MB/0047 for Mrs. Astride Durup" established the following: on 21 April 1993, through an internal memo, Mr. Dolor Ernesta, the Principal Secretary for Community Development, requested the Housing Application file of Mrs. Astride Durup from the Director of Housing. On 11 April 1993, the Principal Secretary of Community Development wrote to Mrs. Durup and informed her that she should contact her District Council for any housing assistance. On 17 October 1994, Mrs. Durup applied for assistance at the Mont Buxton District office through a formal 'Application for Housing Assistance'.

13. On 4 February 1996, the District Administrator of Mont Buxton District requested the Minister of Community Development's approval of a proposed allocation to Mrs. Durup of a two-bedroom flat at Roche Caiman, which two applicants had already been offered but refused. On 28 May 1998, the District Administrator of Mont Buxton District requested the approval of the Principal Secretary of Ministry of Community Development for a proposed allocation to Mrs. Durup of a two-bedroom flat at Signal Hill, together with seven other families rated as "needy families for allocation". On 26 June 1998, the Minister for Land Use and Habitat informed the Mont Buxton District Administrator that Mrs. Durup had requested an exchange from Mont Signal to Roche Caiman, and advised that therefore the case of Mrs. Durup would be considered at a later stage.

14. On 7 August 1998, the Mont Buxton District Administrator responded that the two-bedroom flat allocated to Mrs. Durup at Mont Signal would be re-allocated to a Mrs. Christelle Bonne. On 15 July 2002, the Central Committee Member of Mont Buxton District requested an update regarding Mrs. Durup's housing case. On 24 July 2002, the Minister of Land Use and Habitat informed the Central Committee Member of Mont Buxton District that Mrs. Durup's case was being considered and that he would be informed of an outcome as early as possible.

15. On 30 October 2003, through a housing department internal memo, it was noted that Mrs. Durup had applied for housing assistance on 17 October 1994, and at one time she was given approval for a two-bedroom house at Mont Signal, but for some reason she never got the house. It was stated that she was presently occupying a friend's house at Hangard Street, and that she had been pre-allocated another house under the "Ex- Tarmac Housing Project". On 5 November 2003, the office of the Minister of Land Use and Habitat informed the President's office that Mrs. Durup had applied for housing assistance on 17 October 1994, and at one time she had been given approval for a two-bedroom house at Mont Signal but declined the offer and opted for a transfer due to her asthmatic child. Her request for Roche Caiman had not materialised due to complexities with the re-housing of tenants. The note confirmed that she was pre-allocated a property under the "Ex- Tarmac Housing Project" which would be ready for occupancy in the third quarter of 2004.

16. On 4 August 2004, the Assembly Member, Honourable Ralph Agrippine (SPPF) requested the Minister of Land Use and Habitat's assistance because the house that his half-brother, Alphy Simeon, Mrs. Durup, and their three children, had been living in had been demolished and they had moved into a flat which was originally allocated to Mrs. Laura Amblavaney but which was provided to them given their emergency situation. However, in a bid to force them out, Mrs. Amblvaney had disconnected the electricity and water utilities.

17. On 5 August 2004, the Seychelles Housing Development Corporation (SHDC) informed Mrs. Durup that she was illegally occupying the house which was allocated to Mrs. Amblavaney, but that they

were allowing a temporary electricity and water utilities connection for a period of three months on humanitarian grounds. On 18 August 2004, Mr. Simeon and Mrs. Durup wrote to the Vice President, Mr. Joseph Belmont, asking that he do something as they were considered to be illegally occupying the one-bedroom flat with three children and that they had been promised a three-bedroom house.

18. On 6 October 2004, the Minister of Land Use and Habitat responded for the Vice President's Office to Mr. Simeon and Mrs. Durup, acknowledging their letter and promising assistance on the Ile Perseverance Housing Project. On 26 August 2006, the District Administrator of Mont Buxton District requested an update on Mrs. Durup's land application from the Ministry of Land Use and Habitat. On 6 September 2006, the Ministry of Land Use and Habitat responded to the District Administrator of Mont Buxton District, saying that the case had been forwarded to the Housing Administration Section for necessary action.

19. On 14 August 2008, the Property Management Corporation (PMC) wrote to the District Administrator of Mont Buxton District regarding the case of Mr. Simeon and Mrs. Durup, to give his views on the "illegal activities" undertaken by the "illegal occupant of the flat at Mont Buxton". On 4 July 2009, the PMC applied at the Supreme Court of Seychelles for a "Writ Habere Facias Possessionem" against Mr. Simeon and Mrs. Durup to remove them from a flat they were occupying on Hangard Street. On 24 October and on 27 October 2011, respectively, the PMC applied at the Supreme Court for an "Enforcement and Execution of Judgement" to evict Mr. Simeon and Mrs. Durup from the flat at Hangard Street. The Supreme Court granted this application on 18 February 2011. There was no further correspondence on the file.

III. FINDINGS OF THE COMMISSION

A. Mandate and Applicable Law

20. The Truth, Reconciliation and National Unity Commission Act, 2018 ("Act") directs that the Commission shall "abide by universally recognised legal principles and human rights norms" and is "to observe applicable and appropriate rules of natural justice and international fair trial standards".[3] These principles must guide the Commission's determination of whether the conduct alleged constitutes human rights abuse pursuant to its Act.[4]

21. The reference to "universally recognised legal principles and human rights norms" within section 3(9) of the Act directs the Commission to consider international human rights standards as the applicable substantive law, while the reference to "applicable and appropriate rules of natural justice and international fair trial standards" within section 6(8)(a) of the Act primarily concerns the procedures for the Commission's determinations, particularly where it is determining perpetrator status.[5]

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[3] TRNUC Act, secs. 3(9), 6(8)(a).
[4] *Id.*, section 2(8).
[5] Hearing of Attorney-General Frank Ally, TRNUC, 6 July 2020 ("This law is giving you the opportunity for you to fly right over whatever thing had been done by a law, and will tell the Commission, Commission you can make whatever findings that you feel if there was...if there are violations of human rights. This was the reason why there have been the Truth, Reconciliation Commissions in those countries. In South Africa also apartheid was legal, it was legal, but it was obvious for the national reconciliation of South Africa that the law that made apartheid legal infringed - it was a gross violation of one's human rights and therefore when it made a finding it did not take it into consideration.

22. The Commission recalls that pursuant to Section 7(b) of the TRNUC Act, in order to achieve its objectives the Commission may "determin[e] the responsibility of individuals in respect of any violations".[6] Any finding of individual responsibility is to a balance of probabilities standard.[7] In that regard, the Commission, underscores that any such determination of individual responsibility is not made in a criminal legal sense, but rather to reveal the truth about events that occurred during or in relation to the Coup d'état of 1977. Thus, the Commission interprets Sections 3(9) and 6(8)(a) of the Act discussed above to direct it to provide certain due process guarantees, such as notice of determination of suspect and perpetrator status, the right to reply before the Commission, and respect for a perpetrator's assertion of the right against self-incrimination, among others.

23. The Commission further notes that a persons who admits responsibility or is found by the Commission to bear perpetrator status may, pursuant to Section 12 of the TRNUC Act, petition the Commission for amnesty upon providing "a full and frank disclosure of his or her culpable acts in relation to any violation and [offering] sincere apologies to the victim or victims".[8] The Commission considers that these provisions, in light of Sections 3(9) and 6(8)(a), provide sufficient protection for the human rights of individuals holding suspect or perpetrator status within the context of the Commission's proceedings.

24. The Commission notes that while each alleged human rights violation will be assessed by reference to universally recognised legal standards and human rights norms, that enquiry does not render the domestic legal framework in which the alleged violation took place irrelevant. The domestic legal framework is instead an important starting point for the examination as to whether the act complained of was legal and then whether it breached human rights standards and norms.

25. In this respect, one important universally recognised human rights norm relevant to the Commission's identification of the substantive standard, but also pertinent to issues of natural justice and fair trial standards, is the prohibition on the retroactive application of the law. Pursuant to this principle the conduct complained of; must have been criminalised by some source of law that was previously applicable and which was sufficiently accessible and foreseeable to the individual. At the heart of this principle is the notion of fairness. A persons should not be held to account for conduct that was not criminal at the time it took place.

So you are not there to take into consideration if a law was a lawful or it was not. You are here to see whether that action taken in relation to that complainant is a violation or not, and when you will define that violation you will have to define it in relation to that definition and that provision which tells you have to look at universal human rights".).

[6] *Id.*, sec. 7(b).

[7] *Id.*, sec. 6(8)(c).

[8] TRNUC Act, sec. 12(4). However, should the perpetrator exercise their right against self-incrimination, Section 12 would not be applicable as the requirement of a "full and frank disclosure" would not be met. Notably, where a perpetrator petitions for amnesty before the Commission, Section 12(6) provides that regardless of any other written law, "(a) a criminal investigation or criminal or civil proceeding shall not be commenced or shall be discontinued, as the case may be, in respect of any matter for which an amnesty has been sought, until the final determination of the Commission" and Section 12(6)(b) provides that "a perpetrator who has been granted amnesty in respect of a violation shall not be criminally or civilly liable in respect of the acts or omissions that were part of the disclosure and apology. The amnesty shall not affect any order by the Commission for remedies, reparations or rehabilitation". *Id.*, sec. 12(6).

26. The Commission considers that this principle of non-retroactivity is equally applicable to its consideration of allegations that an act constituted a violation of human rights. As human rights are evolving rights, the Commission considers that when determining whether the conduct complained of breached international human rights standards, fairness requires it to assess that conduct by reference to human rights principles applicable at the time of the alleged violation.

27. Accordingly, the Commission will consider, where relevant, the domestic legal framework under which the alleged act occurred and the consistency of that framework with "universally recognised legal principles and human rights norms" at the time of the act complained. This approach will render the Universal Declaration of Human Rights applicable in all cases along with early co-existing principles of customary international law. Additionally, and by reference to the temporal scope of the allegation, the Commission will consider domestic constitutions and laws and applicable treaties to which Seychelles has committed.

B. Approach to the Evidence

28. Pursuant to Section 6(8) of the Act, the TRNUC is not bound by evidentiary rules. All evidence deemed probative is admissible, including hearsay evidence. The Commission has been careful to assess the evidence of all witnesses in determining the veracity of their testimonies. In so doing, the Commission has been mindful that the vagaries of perception and human recollection, especially when there is a long passage of time between the event and the witnesses' evidence before the Commission, may impact on the reliability of the evidence given, even though a witness is honestly giving that evidence before the Commission.

29. Nonetheless, as a matter of principle, provided the witness has recounted the essence of the incident in acceptable details, the Commission does not consider discrepancies in peripheral details in the evidence of a witness, or between the evidence of various witnesses, as necessarily undermining the establishment of the basic allegations made. In this respect, the Commission finds that due to the passage of time, witnesses cannot be expected to recall with complete accuracy the precise time or dates of events or other peripheral details.

30. The Commission may rely on the uncorroborated evidence of a single witness as establishing a fact alleged, provided it is satisfied of both the credibility and reliability of that witness's evidence. The Commission may also accept accomplice evidence to establish a fact, provided it is satisfied that a motive to lie has been reasonably excluded.

31. The standard of proof applicable to establishing findings of the Commission is the balance of probabilities. The Commission must be satisfied that it is more likely than not that a fact alleged is true.

C. Merits of the Case

32. With regard to the sole claim of abuse of office by a Government official under Section 2(8)(l) of the TRNUC Act,[9] the Commission finds that no violation has been made out on the evidence before it.

[9] TRNUC Act, sec. 2(8)(l).

33. While the Commission previously determined this case to be prima facie admissible before it pending its investigation of the facts which might substantiate the admissibility of the claims as per the mandate of the Commission, it finds now, having completed this investigation and examination of available facts, that the claim cannot be said to be admissible before it. In particular, the Commission notes that no part of Mrs. Durup's evidence or the files the Commission received alleged events which occurred during the Commission's primary temporal mandate, *i.e.*, the time of the one-party State, from the Coup d'état of 1977 through to the entry into force of the 1993 Constitution. Moreover, the Commission considers with regard to its thematic mandate and Mrs. Durup's insistence that she was denied adequate housing on the basis of her political beliefs and affiliation that the evidence before it does not support the conclusion that the claim was related to the Coup d'état so as to be admissible before the Commission.

34. In that regard, the Commission notes that there is insufficient evidence before it to corroborate Mrs. Durup's claims that she was indeed victimised on account of her political affiliation to the previous opposition. While the Commission accepts and has found that many Seychellois affiliated with the opposition were victimised, including in connection to their presence at opposition rallies, and further notes that Mrs. Durup may well have been known to have supported the opposition publicly, the Commission is not convinced that any actual victimisation resulted in this case. The Commission recalls Mrs. Durup's claim that she was entitled to land which had been acquired by the Government purportedly "for the benefit of all Seychellois"; the Commission finds this sense of entitlement misplaced, however, as not all Government-acquired land was then sold to members of the community, but some land was instead put to other uses in the national interest, such as development or defence, which could also be said to be "for the benefit of all Seychellois". Some land, of course, was not used at all post-acquisition, as the Commission has found in many cases before it with regard to claims of the violation of unjustified acquisition or loss of property or business. But the more pressing issue is that Mrs. Durup did evidently receive responses from Government in relation to her applications for housing assistance. Despite some considerable delays, which may have formed the basis of the claim of abuse of office if such were deemed admissible but which lacked any evidence that they were on political grounds, the Commission finds from the evidence adduced that Mrs. Durup was in fact assisted by various members of the SPPF Government. Then herself refused the approved allocation of housing at Mt. Signal in 1998.

35. As such, the Commission finds that while regrettable, the claims of Mrs. Durup cannot be deemed admissible before it due to their lack of relation to the Coup d'état of 1977. Therefore, the Commission finds that no human rights violation under its mandate has been established.

V. RECOMMENDATIONS ON REPARATIONS

36. As no violation under the TRNUC Act has been found, the Commission cannot recommend any reparations in this case.

VI. CONFIRMATION OF KNOWLEDGE OF THE RECORD

37. Each of the undersigned Commissioners swears or affirms that he or she has comprehensively familiarised him or herself with the record in Case 423.

38. Each of the undersigned Commissioners hereby swears or affirms that his or her deliberations in this case are based on his or her knowledge of the entire record of the case.

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