

The Truth, Reconciliation and National Unity Commission -Victims are at the core of the Commission's mandate

By the Commissioners

It seems trite to note that persons who suffered human rights abuses committed during, or in relation to, the Coup D'état of 5 June 1977, have waited a very long time for the opportunity to have those abuses properly addressed. Prior to the adoption of the Truth, Reconciliation and National Unity Act, 2018, there appears to have been no avenue for aggrieved persons to seek redress or, in cases of disappearances or deaths, to find out what happened to their loved ones and why. While the Constitution of the Third Republic sought to address allegations of unjustified land acquisitions in its transitional provisions, it made no provision to deal with other human rights abuses that occurred during the preceding period. Indeed, having waited so long, in some cases over 42 years, it can be anticipated that victims and their family members will have high expectations of the Commission.

At the outset it must be noted that victims and harms caused to victims are at the core of the Commission's mandate. The Commission is to investigate complaints of alleged human rights abuses in relation to the Coup D'état of 5 June 1977, filed by victims directly, or through representatives on their behalf, or where deceased, by their family members. Thus, it is victims who will drive the focus of the Commission's works.

In conformity with well-established international norms concerning the right of victims and their families to know the truth about the abuses they suffered, the Commission is mandated to ascertain the truth of complaints made and create an accurate and objective public record of alleged violations. Thus, the Commission is expected to provide answers to victims, their families, and the broader community of the Seychelles.

Establishing the truth about an allegation may pose significant challenges to the Commission. Putting aside confessions by perpetrators, the Commission's ability to find the truth about what occurred may well turn upon the willingness of witnesses to come forward and give evidence before the Commission. The Commission notes that with the passage of time the likelihood of witnesses coming forward voluntarily may be reduced. After such a long period of time,

memories may have faded, people may simply not wish to be involved or may under-estimate the significance of what they have to say, or fear retaliation for coming forward.

Under the Act, if relevant witnesses do not come forward the Commission may exercise its power to summons any person to appear before it and to compel their testimony. The Commission has made apparent in its Rules of Procedure and Evidence that it will use these powers only when there is no reasonable alternative to receiving the evidence sought. In that respect, the clear preference of the Commission is that those who are in a position to provide information about complaints filed do so because it is the right thing to do for victims and their family members.

In seeking to meet its objectives under the Act the Commission is mandated to seek the assistance of the Police Force of the Seychelles. As made clear by the Constitution of the Republic of the Seychelles, the Police Force of the Seychelles is to perform any functions as may be prescribed by an Act and thus the Police Force of the Seychelles is constitutionally bound to provide assistance to the Commission upon the Commission's request. Specifically identified in the Act is the provision of security to any witness and the Commission will not hesitate to ensure that protection is provided in any case in which it may be required.

In addition to establishing the truth of allegations of human rights violations by witness evidence, the Commission may also rely on documentary evidence contained in public or private archives in the Seychelles. The Commission is authorized to access any such archive, regardless of any restrictions contained in the laws of the Seychelles. As such, a holder of an archive is presumptively prohibited from denying the Commission access on the grounds that an archive contains State secrets or other highly sensitive materials that may otherwise not generally be subject to disclosure. The Commission is determined to leave no stone unturned in locating relevant documentary materials and will not hesitate to use its powers to punish for contempt any individual who seeks to deny the Commission access to materials it is lawfully mandated to access.

In finding the truth about complaints the Commission is not required to meet the criminal standard of beyond reasonable doubt, but need only meet the standard of a balance of probabilities. In other words, the Commission need only find that it is more likely than not that an allegation of human rights violations is true. Once the Commission is so satisfied it falls to the Commission to determine and

recommend appropriate remedies and reparations for the victims of the human rights violations.

Putting aside those limited circumstances where the Commission may order that a perpetrator, or family members of a deceased perpetrator directly compensate a victim, in most instances the Commission is mandated to determine and recommend appropriate remedies or reparations for payment by the State.

In determining what is appropriate to recommend the Commission will be in the first instance guided by the views of the individual victim and what is important to him or her in terms of acknowledging his or her suffering and making amends for it. For some, an unconditional apology may suffice, or the recommendation of the establishment of a memorial as a permanent record of their families suffering, while for others, who have suffered financial hardship as a result of the violations inflicted upon them, monetary compensation may be rightly expected.

With respect to the latter, in making a determination of the fair compensation payable to a victim, the Commission will need to consider more than just the views of the individual victim. Mindful of its objective of uniting the people of the Seychelles around a common agenda going forward, the Commission will have to consider in the circumstances of the individual victim what is fair to that victim, but also, what is a reasonable burden to be placed on the tax-payer in that case. In this respect, it has to be recalled that the Commission's recommendations with respect to remedies and reparations have to be ones that the Government of the Seychelles is willing to implement.

In conclusion, victims and their families are the drivers of the Commission's processes. It is complainants who will orientate the Commission's investigations and at the heart of the Commission's objective is the finding of the truth about what complaints allege. Victims' long wait for an avenue for redress is finally over. Come 9 August 2019, victims have six months in which to bring their complaint before the Commission.