

**REPORT OF THE COMMISSION OF INQUIRY INTO THE CIRCUMSTANCES ASSOCIATED WITH
THE ARREST, DETENTION AND DEATH OF MERVIN PIERRE BETWEEN THE 25TH AND 26TH OF
JULY 2009.**

**ESTABLISHED ON THE 10TH OF AUGUST 2009 BY HIS EXCELLENCY JAMES ALIX MICHEL,
PRESIDENT OF THE REPUBLIC OF SEYCHELLES IN EXERCISE OF HIS POWERS UNDER THE
COMMISSIONS OF INQUIRY ACT (CAP 39)**

**COMMISSIONER: ANTHONY FRANCIS TISSA FERNAND, JUSTICE OF THE COURT OF APPEAL OF
THE SEYCHELLES**

JUSTICE ANTHONY FRANCIS TISSA FERNANDO

DATED THIS.....DAY OF OCTOBER 2009

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CHAPTER 1

APPOINTMENT OF THE COMMISSION OF INQUIRY:-

On the 10th August 2009 His Excellency James Alix Michel, President of the Republic of Seychelles in exercise of his powers under the Commissions of Inquiry Act(Cap 39) appointed me, Anthony Francis Tissa Fernando, as a one man Commission, under Gazette Notification No. 38 XXXIV of Monday 10th August 2009 to inquire into the circumstances associated with the arrest, detention and death of Mervin Pierre between the 25th and 26th of July 2009 and render a Report of my findings, the reasons for such findings and recommendations if any, not later than 5 months from the date of publication of the Gazette, namely before 10th of January 2010. A copy of the said Gazette Notification is to be found at **X1** in the List of Documents.

On the 13th of August 2009 as required by the Commissions of Inquiry Act I took the oath before President Michel. A copy of the oath is to be found at **X2** of the List of Documents.

The Inquiry was held in public since there was no direction by the President to the contrary in the gazette notification appointing the Commission. The inquiry was conducted in the building of the Seychelles Court of Appeal.

After the appointment of the Commission there was a Notice to the Public, published on the Seychelles Nation of 14th, 17th and 18th of August 2009 calling upon the public who have any knowledge pertaining to the matters which are the subject matter of the Inquiry to contact the Secretary to the Commission before the 31st of August 2009. A copy of this Notice is to be found

at **X3** in the List of Documents. This Notice was on the 14th, 15th, 16th and 17th of August 2009 broadcast on SBC Television in the 06.00 P.M. French news, 07.00 P.M. English news and 08.00 P.M. Creole news and also on SBC Radio in the 05.00 P.M. French news, 06.00 P.M. English news and 07.00 P.M. Creole news.

There was also a Notice to the Public, published on the Seychelles Nation of 23rd and 24th of September 2009 informing the public that the Commission will commence and start hearing the testimony of witnesses in relation to the Inquiry during the week commencing from the 5th of October 2009 and that they were free to attend. A copy of this Notice is found at **X4** in the List of Documents. This Notice was broadcast on the 1st of October 2009 on SBC Television in the 06.00 P.M. French news, 07.00 P.M. English news and 08.00 P.M. Creole news and also on SBC Radio in the 05.00 P.M. French news, 06.00 P.M. English news and 07.00 P.M. Creole news.

The Commission sat to hear the evidence of 41 witnesses summoned before it on the 5th, 6th, 7th and 8th of October 2009. The List of witnesses who testified before the Commission is to be found at **X5** of the List of Documents. The rights, obligations and privileges of the witnesses were set out in detail in the summonses served on each of the witnesses. Copies of the two types of the Summonses issued are to be found at **X6a** and **X6b** of the List of Documents. P.C. Nelson Rose and P.C. Paul Dubois who testified before the Commission were warned before their testimony that they need not answer any questions which they thought would incriminate them since they have been indicted before the Supreme Court for Manslaughter of Mervin Pierre and their trial is due to commence shortly. Their warnings are to be found at pages 229

and 237 of the proceedings of the Inquiry. 9 Exhibits were produced before the Commission.

The List of exhibits is to be found at **X7** of the List of Documents.

CHAPTER 2

COMMISSIONS OF INQUIRY ACT (Cap 39):-

The President may, whenever he shall deem it advisable, issue a Commission appointing one or more Commissioners to inquire into-

- (a) The conduct of any officer in the public service; or
- (b) the conduct or management of any department of the public service, or of any public or local institution; or
- (c) any matter relating to the public service; or
- (d) any matter of public interest or concern; or
- (e) any matter in which an inquiry would be for the public welfare.

According to the Gazette notification this Inquiry came under the provisions of (a) and (d) above.

Chapter 3

CONDUCTING THE INQUIRY AND EXPENSES OF THE COMMISSION:-

Conducting an Inquiry of this nature is a difficult task especially because I have no legal personnel or even a personal secretary to assist me. I had to personally draft and prepare all the necessary documents, go through all the statements of the persons whose statements have been recorded, decide on the witnesses to be called, ensure the presence of the witnesses before the Commission, question all witnesses summoned and personally type out the Commission of Inquiry Report. The Senior Police Officer detailed by the Commissioner of Police to assist me did not provide me with a complete dossier containing the statements as expected. I had to keep on calling various police officers and some times seek the assistance of officers from the Attorney General's Office to get certain statements. There were instances where I had to instruct the police to record the statements of certain persons. Dr. S.K. Gungadin, Principal Police Medical Officer, Mauritius delayed by a period of almost 6 weeks to submit his Post-Mortem Examination Report and this delayed the work of the Commission considerably.

The Commissioner of Police as directed by the President in the appointment of the Commission, detailed Cpl. Chantal Prea to assist the Commission in its work of serving summons on the witnesses. She assisted in the service of summonses on the witnesses and performing duties as directed by the Commission. The expenses in relation to payments made to the Secretary to the Commission; 2 stenographers; the one who helped in the recording of the proceedings; media advertisements; stationery; meals, refreshments and taxi fares for the Secretary, stenographers, police officers on duty during the sittings of the Commission were paid by State

House and all financial matters were handled by the Secretary to the Commission Mrs Vivienne Christine Vadivelo and the Chief Accountant of State House Mr. Bijoux. I have been informed by Mrs Vadivelo that an amount of about SR 65,687.15 has been expended so far and what remains as expenses would be those involved in compiling(binding) this Report. The 'Break Down of the Expenses of the Commission' is annexed herewith as **X8**. Commissioners appointed under the Commissions of Inquiry Act shall not be entitled to any remuneration unless such remuneration shall be specially granted by the President and there was no request by me for remuneration or a direction by the President to this effect.

CHAPTER 4

FACTS IN BRIEF:-

Mervin Pierre was arrested on the late evening of the 25th of July 2009 near Naidoo's shop at Pascal Village, on a complaint made by one Elvis Robert and brought to the Beau Vallon police station. At the Inquiry Office his possessions were removed from him and also asked to remove his shoes, his belt, his hair band and the jeans that he was wearing. While at the Inquiry desk Mervin had fallen on the floor. Thereafter he had been detained in a cell with 9 other detainees Mervin had kept on knocking on the door leading from the cell to the Inquiry Office saying that he had done no wrong and to release him so that he could go back to his family who were waiting for him. He had been sworn at in abusive language by certain police officers who ordered him to remain quiet. One of the police officers had put his hand inside the iron bars of the cell door and pulled Mervin by his hair. Mervin had then bitten this officer on his palm. Two police officers are then alleged to have gone into the cell dragged Mervin by his arms pulled him up and pushed him inside individual cell number 3 and locked him up. On being pushed Mervin had fallen inside cell number 3 hitting his head on the wall. He had fallen in a somewhat sitting position with his head tilted towards his shoulder. He had remained in that position for almost 12 hours until he was found dead the following day. No police officer had gone into Mervin's cell to check on his condition during this entire period.

CHAPTER 5

THE THREE MODULES UNDER WHICH THE INQUIRY WAS HELD:-

I decided to deal with this Inquiry, under three main modules, based on the instructions given to me in my appointment that was gazetted on the 10th of August 2009, namely:-

- 1) The arrest of Mervin Pierre.
- 2) The detention of Mervin Pierre.
- 3) Circumstances associated with the death of Mervin Pierre while in police custody.

I have dealt with the important issues in relation to the three modules under various sub-titles.

In dealing with these issues I do not intend to set out in detail in this Report the evidence of the witnesses but simply to make reference to the salient features of their evidence. The entire testimony of all the witnesses who testified before the Commission has been compiled in the Record of Proceedings consisting of 324 typed A4 papers and is available for inspection with the Secretary to the Commission for anyone interested in further details. A copy of The Record of Proceedings will be kept with the Secretary to the Commission and it is marked **X9**.

CHAPTER 6

WAS THERE A NEED TO ARREST MERVIN PIERRE ON THE EVENING OF THE 25TH OF JULY 2009:-

The arrest of Mervin was as a result of a phone call from Elvis Robert. According to P.C. Marcus Jean he received a phone call from Elvis around 7.30 p.m. on the 25th of July 2009, to the effect, that Mervin was threatening him with a knife and before he (Elvis) takes a machete and cut Mervin to come and take Mervin away. P.C. Jean had then proceeded to the scene, namely to Pascal Village in the company of P.C. Nelson Rose. Arriving at Naidoo's shop at Pascal Village P.C. Jean had met Elvis, who told him that Mervin was in possession of a knife and that Mervin had threatened him with the knife when Elvis was going in to the shop. P.C. Jean had therefore apprehended Mervin. P.C. Rose had removed a small knife from the possession of Mervin. When questioned about the knife Mervin had told him that this was his 'working knife'. P.C. Rose corroborated P.C. Jean regarding the apprehension, the seizure of the knife and what Mervin said when questioned about the knife. According to P.C. Jean he had asked Mervin to leave the place but Mervin had told him that he was waiting for one of his friends who was in the shop. P.C. Jean then went on to state that since Mervin was getting more aggressive he was hand cuffed and put into the police vehicle. However P.C. Jean replied in the negative when specifically questioned as to whether Mervin had tried to fight the police at the time he was arrested. All that Mervin had done was refusing to get into the vehicle. P.C. Jean admitted that they did not question the other people who were gathered there, as regards the complaint made by Elvis against Mervin. Nobody had come forward to tell them anything as regards Mervin or Elvis or that there was a problem between Mervin and Elvis. P.C. Jean also stated

that he did not know of any problems between Elvis and Mervin prior to this date as he was new at the Beau Vallon police station. Looking back and with hindsight he said that it would have been better if he had questioned the people around before he took the decision to arrest Mervin. P.C. Jean admitted that Elvis or his family did not request them to arrest Mervin. It is therefore clear that P.C. Jean arrested Mervin purely on the complaint of Elvis Robert without verifying as to its truthfulness from the people who were gathered around the shop and without giving any heed to what Mervin had said, namely that he had not threatened Elvis and that the small knife in his possession was his 'working knife'. It also appears that P.C. Jean failed to consider that Elvis himself could cause a breach of the peace in view of the threat uttered by Elvis against Mervin, when Elvis called P.C. Jean. In that case P.C. Jean heard the threat himself rather than having to rely on the complaint of an angry man, namely Elvis. If it was necessary to arrest Mervin in the given circumstances, the Commission is in a difficulty to understand why Elvis Robert was not arrested or even warned. Could there be any truth in what Joanna Cecile Nicette told the Commission that "Elvis is a known Informer for the police"? Although P.C. Jean stated that he explained to Mervin of his constitutional rights at the time he was arrested, he had not recorded it anywhere or put it down in the statement he made to the police in relation to this incident.

According to P.C. Rose who was with P.C. Jean at the time Mervin was arrested, P.C. Jean had told him that Mervin was under the influence of liquor and therefore to keep the peace Mervin should be taken to the police station. P.C. Rose also stated that while at Pascal Village P.C. Jean had told Mervin that he will take him home. He further stated that a person had agreed to

come with them to show Mervin's house but P.C. Jean had told that person that it was not necessary as he knows where Mervin lives. None of the witnesses present at Naidoo's shop state that Mervin was dead drunk prior to his arrest. He may have been under the influence of liquor but posed no threat to anyone especially after the knife that was with him had been taken away by the police. Had he been taken home as suggested by all those who were present at Naidoo's shop, there was no likelihood of Mervin being a danger to himself.

It is clear from the evidence of those who were near the shop at Pascal village that the incident complained of by Elvis never took place. According to Jude M. Alcindor, Kenneth K.J. Derjacques, Yvon M. Dugasse and Desire V. Laurence there was no fight or argument between Mervin and Elvis near Naidoo's shop. For that matter they had not seen Mervin even making a gesture at Elvis. According to Jude, Elvis was on one side of the road and Mervin on the other side and thus they did not even get close to each other. According to him when the police came Desire had volunteered to show the police where Mervin lived so that he can be dropped at home but the police had brushed him aside and had locked Mervin in the van. Desire and Derjacques confirmed this. Jude had seen Mervin opening a bottle with the small knife that was with him but does not speak of Mervin threatening Elvis with it. The Commission believes that Elvis having seen a knife in the hand of Mervin took the opportunity to state that Mervin had threatened him with it because of the animosity that existed between him and Mervin. Jude had also heard Mervin telling the police that it was his work knife when the police questioned Mervin about it. Jude, Dugasse and Desiree all confirmed that Mervin was not drunk and Jude stated before the Commission that Mervin understood everything he was

doing. According to Jude and Dugasse, Mervin had not fought or argued with the police when they came. Desire stated that when the police came Mervin had asked them as to why he is being arrested and that he had not done anything wrong. According to Dugasse when the police came on the scene they simply said “Mervin we need you, Get into the van”. Derjacques also stated that when the police came they told Mervin “Let’s go and we will take you to your home at Le Niol”. It appears by the time the police came to the scene a decision had been taken to arrest Mervin. As to why such a decision was taken or as to why the police made out to the others who were there that Mervin was going to be taken home is not clear. There was no evidence before the Commission to the effect that something happened while Mervin was in the van which necessitated Mervin being taken to the police station.

It was as a result of the complaints made by Elvis Guy Robert that Mervin was arrested. According to him when he was going to the shop Mervin had stood in front of the shop, removed a small knife from his waist, placed it underneath his (Mervin’s) shirt in front so that Elvis could see it and in a low voice had told him “I will break the cunt of your mother.” None of the persons at the shop had seen this or heard Mervin’s alleged threat to Elvis. Elvis himself had not told anyone about this, other than one Michel. Michel did not come forward to give evidence or make a statement to the police. It was after this that Elvis claimed that he called the Beau Vallon police station. According to P.C. Issac however, when Elvis called the Beau Vallon police station he had stated that Mervin was fighting with him and that he was using a knife. Thereafter Elvis claimed that Kenneth Derjacques had reported to him that Mervin had told Kenneth that he (Mervin) would remove Elvis’ intestines. Kenneth on being specifically

questioned about this by the Commission denied having made such a statement to Elvis. Elvis stated that he called the Beau Vallon police station a second time because Mervin thereafter stood on the road and insulted him. None of the persons who were at the shop and who testified before the Commission including his concubine, Margarita Marie-Therese Delorie confirmed this.

The rest of the evidence of Elvis before the Commission was identical to the testimony of the other witnesses before the Commission. He stated that when the police came every one who was there had asked the police to take Mervin to his home. He stated that Desire had volunteered to show Mervin's house to the police but the police had asked him not to interfere with their work. He stated that Mervin did not fight with the police. He was of the view that it would have been better if Mervin had been taken to his home since the police had already taken the knife away from him. He also stated that Mervin was able to walk and not dead drunk. Margurita had questioned Mervin about the allegation of threats Elvis had attributed to Mervin but Mervin had told her that there was no problem between him and Elvis and that he had not done anything to Elvis. She stated that Mervin was 'heavy' but not drunk. He could stand on his feet and understand clearly what she told him. On being questioned whether there was a need to arrest Mervin she said that since everyone who were there, including Elvis and herself, wanted Mervin to be taken home and the police officers had also said that they will take him home; the police should have taken Mervin home.

When the circumstances in relation to the arrest, as testified by the witnesses before the Commission, were put to Mr. Michael Fitzgerald, the Deputy Commissioner of Police and his

views sought as to whether there was a need to arrest Mervin his answer was in the negative. He said that there is a culture here in Seychelles, for people who create problems similar to that complained of, to be arrested. He went on to state “In my view, from where I come from, the normal procedure, for someone who created a commotion; there is no evidence that he assaulted anybody, normally what you do, a peacekeeping role, as a police officer, put him at the back of the car and take him home and he is out of your way; no more problem.”(verbatim). He went on to state that one must evaluate the situation based on his knowledge of the law, the powers he has and the rule of commonsense. Effectively you may have a power to arrest somebody. But if you have a discretion as to whether you arrest or not, you have to use your common sense and decide what is most prudent. In this case he felt common sense had not prevailed. He agreed with the Commission when questioned that the decision to arrest must be based on something.

In this case it is clear to the Commission that there was not even an incident for the police to arrest Mervin. Had the police on arrival at the scene questioned the bystanders and used their sensible judgment they would have realized that Elvis had either made up this story or exaggerated, to get Mervin into trouble. According to W.P.C. Lia Juliette; P.C.Jean and P.C. Rose came back to the station with Mervin 15-20 minutes after leaving the station which indicates that there was no investigation at Naidoo’s shop. It appears from the way the police acted in this case that they were not aware of the fact that there is a need to make a conscious decision before arresting or detaining a person. To P.C. Jean it appears that arrest should follow a complaint. The position may have been different if P.C. Jean was aware of the animosity

between Elvis and Mervin and the fact that there had been complaints lodged at the police station against Mervin. Then he could have justified the arrest on that basis, but P.C. Jean was unaware of any.

CONCLUSION OF THE COMMISSION AS TO THE VALIDITY OF THE ARREST:-

The Commission concludes that there was no basis for the arrest and therefore the arrest of Mervin was unlawful.

RECOMMENDATION OF THE COMMISSION IN CONDUCTING ARRESTS:-

The Commission recommends that an arrest should always be on reasonable suspicion of a person having committed or of being about to commit an offence for the purposes of investigation or preventing the commission of an offence since it is an interference with the fundamental right of liberty of a person. A police officer exercising his judgment to arrest should therefore make sufficient inquiries where possible and be satisfied that there is a reasonable basis for the arrest and not rush to act on the complaint of a person, without any other evidence. There may be instances however that one may have to deviate from this procedure where the complaint is of a serious nature and there is no time to lose before

carrying out an arrest. The point being made is that arrest and detention does not necessarily follow a complaint.

A police officer conducting an arrest should also inform a person who is arrested or detained at the time of his arrest or detention or as soon as is reasonably practicable thereafter in, as far as is practicable, a language that the person understands of the reason for the arrest or detention, the right to remain silent, the right to be defended by a legal practitioner of the person's choice and, in the case of a minor, the right to communicate with the parent or guardian. Not informing a person arrested or detained of these rights amounts to a contravention of the constitution and would render the arrest and/or detention illegal. A police officer must maintain a record in his Note Book or Occurrence Book that the person arrested or detained has been informed of the rights and get the signature or thumb print of the person arrested or detained to acknowledge that he has been informed of the rights.

CHAPTER 7

COMPLAINT MADE BY ELVIS ROBERT TO THE POLICE ON THE EVENING OF THE 25TH OF JULY 2009:-

It appears to the Commission that Elvis gave false information to the police when he called the police on the evening of the 25th of July 2009. According to P.C. Issac when Elvis called the Beau Vallon police station he had stated that Mervin was fighting with him and that he was using a knife. This was his first complaint. When he called P.C. Jean thereafter he had said that Mervin was threatening him with a knife. This is what he repeated to P.C. Jean when he met P.C. Jean at Naidoo's shop at Pascal Village. Elvis in describing the same event had changed his version of Mervin fighting and using a knife to one of threatening with a knife within a matter of half an hour. None of these versions are supported by the testimony of any of the persons who witnessed what took place at Naidoo's shop at Pascal village. Elvis described the incident to the Commission in such a way that others present at the scene may not have been in a position to see or hear what took place. This is probably because he was aware of the fact that none of those persons who were at the scene, including his concubine would confirm what he was saying. According to Elvis he called the police station on the morning of the 26th of July and requested the police to release Mervin because "Mervin did not have the opportunity to cut/injure me". If he did not have the opportunity to cut or injure him the question arises as to why he told P.C. Issac that Mervin was using a knife. All this shows that Elvis was not steadfast in what he was saying. I am therefore of the view that the Honourable Attorney-General should

consider prosecution of Elvis Robert for committing an offence under section 122(a) and (b) and (c) of the Penal Code, namely false information to a police officer. Section 122 states as follows: Whoever gives to any person employed in the public service (namely, in this case a police officer) any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause such person employed in the public service- (a) to do (in this case arrest Mervin) or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or (b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person (in this case Mervin); or (c) to devote his time and services to the investigation of such information, shall be guilty of a misdemeanor and shall be liable to imprisonment for six months or to a fine of Rs. 500 or to both such fine and such imprisonment.

CHAPTER 8

WHAT HAPPENED NEAR THE INQUIRY DESK AT THE BEAU VALLON POLICE STATION?

After bringing Mervin to the police station whatever was in his possessions were taken charge by the police, his mobile phone, some cassettes, Rs 20 in cash. He was asked to remove the hair band he was wearing, his shoes, his belt and even his jeans. According to P.C. Marcus Jean while he was giving a report of what had happened at Naidoo's shop to W.P.C. Juliette he had heard a sound and while turning around had seen Mervin on the floor. P.C. Dubois and P.C. Rose were standing very close to Mervin and as pointed out to the Commission, about a few inches away from Mervin. P.C. Issac who was at the Inquiry Desk narrated a story similar to that of P.C. Jean before the Commission. The police claimed that he passed out and they had to revive him by splashing water on his face. P. C. Issac stated that he examined Mervin by passing his fingers at the back of Mervin's head to see whether there were any bumps or blood at the back of the head. Mervin is alleged to have passed urine at the Inquiry Office after his fall. According to P.C. Dubois after carrying out a search and removing certain belongings from Mervin, P.C. Jean had asked Mervin to remove his shoes. He went on to state that "P.C. Jean started to speak loud and get more aggressive. When I was turning I saw Mervin fall and P.C. Rose while on his way going towards the cell to stop Mervin from falling, when he was about to grab Mervin, Mervin's legs.....went into the legs of P.C. Rose. Mervin lost his balance, he fell and he hit his head."(verbatim). This was something different to what P.C. Dubois had stated in his cautioned and witness statements made to the police, which were drawn to his attention by the Commission. In his cautioned statement to the police P.C. Dubois had stated "I saw

Constable Rose tripped the man (reference is to Mervin) feet and the gentleman fell down upward and hit his head on the floor.” In his witness statement he had stated “...I saw P.C. Rose heave him which he loose control and fell on the floor hitting the back of his head on the concrete floor.”(verbatim, from the translation provided to the Commission by the police). He attempted to explain this discrepancy to the Commission by saying “That is what I am trying to state. I am saying I saw like Mervin’s leg tripped between the legs of Nelson Rose or vice versa but I did not say it was done on purpose by Nelson Rose.” The Commission is of the view that this was a futile attempt by P.C. Dubois to deviate from what he had said to the police. P.C. Rose answered in the negative when questioned as to whether he was responsible for Mervin falling down and contradicting both P.C. Jean and Issac said that he was not that close to Mervin when Mervin fell. The Commission is also of the view that Mervin did not fall near the Inquiry Desk by loosing his balance. The evidence from those near Naidoo’s shop or even the police do not suggest that Mervin was so drunk that he could not stand on his feet as would make him fall. It is also surprising to note that out of 6 police officers present in very close proximity to Mervin only two officers claim to have seen Mervin fall. This was an attempt by two police officers to attribute the injuries Mervin suffered on his head to the fall near the Inquiry Desk (a fall police tried to attribute to Mervin himself due to his drunkenness) and thereby exculpate themselves from any liability arising from the fall Mervin had inside cell number 3. Mervin had been placed inside the cell number 3 by P.C. Rose and P.C. Dubois thereafter. P.C. Issac stated before the Commission that Mervin after being revived spoke normally.

The detainees Anthony M. Brioché, Robin Gonthier, Faddy Lucas, Rod S. Payet, Barry M. Radegonde and William Renaud who testified before the Commission said that before Mervin was placed in the cell they heard noises from the Inquiry Office as if someone was been beaten, a person falling down and the voice of someone to the effect 'stop beating'. All the police officers who were at the Inquiry Office during this period, who testified before the Commission denied that Mervin was beaten at the Inquiry Office. Whatever may be the truth of the matter the very fact that detainees boldly said that they heard noises of someone been beaten before the Commission affects the reputation of the Seychelles Police.

Mervin was asked to remove his jeans despite the fact that the jeans had been checked and his belt removed. The reason given by some police officers (P.C. Issac and P.C. Rose) was that it is normal practice and procedure to get a detainee to remove his jeans when there is a pair of shorts underneath. When questioned whether they would get a man to remove his underwear because he has a trousers on, P.C. Rose answered in the negative. When questioned by the Commission that the shorts Mervin was wearing that evening could be worn as underwear, P.C. Issac said it depends on the person.

When Mr. Fitzgerald, the Deputy Commissioner of Police was questioned by the Commission as to whether it is normal practice for the police to remove the jeans once they have been searched and everything has been removed his answer was:

"No. You would remove the shoes. That is fine. This is the first time I heard about the request or the order to remove jeans. They may have to consider if he had a belt." He went on to say

that he had a copy of the Regulations which are taught at the Academy and that it is not in the Regulations.

CHAPTER 9

COULD THE FRACTURE OF SKULL WITH INTRACRANIAL HAEMORRHAGES WHICH CAUSED THE DEATH OF MERVIN BE A RESULT OF THE FALL HE HAD IN THE INQUIRY OFFICE?-

After the fall at the Inquiry desk and after water was splashed on his face, according to W.P.C Juliette, Mervin walked normally. After he was placed in the cell he spoke normally to the detainees and explained to some that he had been arrested on the basis of a complaint made by a person. Thereafter he started knocking on the cell door arguing with the police officers to release him, saying that he had not done anything wrong and challenging the police why they had picked him up. He told the police officers that his wife and family are expecting him at home and therefore wanted to go. When P.C. Nelson Rose pulled him by the hair he reacted by biting him on the palm. All this indicates that Mervin was fully conscious and acting normally. Thereafter Mervin fell a second time when two police officers are alleged to have grabbed him by his arms and virtually thrown him inside cell number 3 on the night of the 25th of July. With that fall he had landed on the floor striking his head on the wall inside the cell and started snoring. He had remained in the very position he fell, as depicted in photograph number 11 in photo album that was produced before the Commission as exhibit P3, up to the time he was pronounced dead the following afternoon.

Dr. Betsy Chavez Morales was questioned by the Commission about the two falls Mervin had while at the police station, namely at the Inquiry Office and inside cell No. 3 and asked to express an opinion as to which of the two falls could have caused the fracture of skull with intracranial haemorrhages which caused the death of Mervin. This is because Dr, Chavez had

expressed the opinion that the fracture of skull with intracranial haemorrhages could have been the result of a single fall. Dr Chavez said that the injuries to the head could have been from either one of the two falls but said that it was more likely that it was from the second fall, namely the one inside cell number 3. The Commission wishes to state that an expert only expresses an opinion and a Court or Commission is not bound to accept that opinion. A court can form its own opinion based on the opinion of the expert and the rest of the evidence in the case. This can be best explained by a simple illustration. A man is found dead under a coconut tree with a head injury. The doctor on being questioned by the Prosecuting Counsel says it is possible that the head injury was caused by a blow with a blunt instrument. On being questioned by the Defence Counsel, the doctor says that it is possible that the head injury was caused by a coconut falling on his head. Now if the doctor's evidence is corroborated by the testimony of a witness to the effect that he saw the deceased being struck by the accused with a blunt weapon the Court can act on the witness evidence, if satisfied as to his credibility.

As stated by Richard Shepherd, a well known Forensic Pathologist: "A pathologist can only make broad comments about the possible effect upon an individual of a blow to the head. As with all injuries, a spectrum of effects is to be expected if a large number of people were to receive exactly the same injury in exactly the same way."

In this case the Commission concludes that taking into consideration the behavior of Mervin after the first fall and his total motionlessness after the second fall save that for the snoring that could be heard, the injuries to Mervin's head was caused by the second fall he had in cell number 3.

Even if it was from the first fall the Commission concludes that the first fall was not as a result of Mervin accidentally slipping and falling and therefore liability for any injuries resulting from that fall will have to be borne by the police. This is because there was no evidence before the Commission to conclude that Mervin at this stage was so drunk as being unable to stand on his own.

According to the Report of Mr. A.L. Ramtoola, Chief Forensic Scientist of the Forensic Science Laboratory in the Prime Minister's Office of Mauritius on determination of Ethyl Alcohol in Blood and Urine of the post mortem specimens from Mervin sent for examination, which Report was produced before the Commission as Exhibit P 8a there was "28 milligrams Ethyl Alcohol per 100 milliliters blood" and "78 milligrams Ethyl Alcohol per 100 milliliters urine". According to Dr. Chavez if there is more than 400 milligrams Ethyl Alcohol per 100 milliliters blood, it is fatal; if there is more than 100 milligrams Ethyl Alcohol per 100 milliliters blood you can conclude that the person is drunk and if there is more than 50 milligrams Ethyl Alcohol per 100 milliliters blood one is in an euphoric state. She therefore concluded that since there was only 28 milligrams Ethyl Alcohol per 100 milliliters blood Mervin was not drunk at the time of his death. But according to Dr. Chavez the Ethyl Alcohol content in urine was high. She said this is because "blood is continuously metabolizing it, so, it is going down, but in the urine, it remains, without metabolizing,....." Dr. Chavez on being questioned by the Commission also said the fact that the blood and urine had been analyzed almost 14 days after the death of Mervin would not bring down the alcohol levels.

CHAPTER 10

WAS THERE A NEED TO DETAIN MERVIN PIERRE ON THE EVENING OF THE 25TH OF JULY 2009:-

P.C. Kevin Daniel Issac's evidence was to the effect that he had told constables Jean and Rose "if they had finished searching Mervin, it is fine for them to place him in the cell." Having said that P.C. Issac was evasive in his answers as to who ordered the detention of Mervin and was uncertain about the basis on which a person is detained as borne out by the following proceedings:

"Q. So you ordered him to be placed in the cell?

A. It is not exactly that. He was going to be placed in the cell.

Q. Who took the decision. Someone must take the decision to put a person in a cell. You cannot just detain him. Who took that decision?

A. The decision depends on the police officer who attended the scene"

Then later on he went on to say:

"A. The person in command of the shift was Marcus Jean, so it must have been he who ordered that he be placed in the cell."

It was only after that he was reminded of his police statement wherein he had stated "I told P.C. Rose to place him in the cell" that P.C. stated:

“A. Yes, I told him to place him in the cell because he had already been searched and the belongings removed.

Q. So, is that the reason why you ordered his detention? Because he had been already searched and everything had been removed?.....

A. Yes.

Later on he went on to say that before releasing a person arrested they had to get authorization from his superiors. It was only after many a question that P.C. Issac stated that Mervin was detained because they had “received a report that he was threatening another person with a knife and the knife which was brought to the station was on his person...”. It is also to be noted that P.C. Issac was not in the 4.00 p.m.-12am shift on the 25th of July and was not the superior of the officers who were working in that shift. When questioned by the Commission as to whether there are any Rules and Regulations in the Force which lays down how a detention is to be made, who takes such a decision and what needs to be done in view of the fact that an individual’s rights are been curtailed by a detention, his answer was “I do not know about that.” This shows that some of the police officers simply do not understand what their responsibilities are and do not appreciate the fundamental right to liberty of every person enshrined and entrenched in the Constitution. W.P.C. Lia Juliette said that P.C. Jean was responsible for taking decisions for detention of persons during that shift. The answers given by P.C. Jean to the questions by the Commission in regard to the issue as to who was in charge of the police station during the 4.p.m. to 12 midnight shift on the 25th of July is to be noted.

“Q. Who was the officer in charge of this shift?”

A. One W.P.C. Juliette had been transferred to be with us for two weeks, so, W.P.C. Juliette was the Senior, but it was I who had been working longer at the Beau Vallon police station.

Q. So what I want to know is, who was in charge of that shift, that particular shift, 4pm to 12 pm?

A. It could be me.

Q. It could be you? What do you mean it could be you?

A. WPC Juliette had been transferred to the police station at Beau Vallon for only two weeks, but she was the most Senior, than me. But due to the fact that I have worked longer at that station, it might be that responsibility was on my shoulder.

Q. Mr. Jean it is not a question of, it might be or it could be. After all, a person in charge of a shift has certain duties and responsibilities. That is why I am trying to find out. So I must know, whether it is you, or her, who was in charge.

A. It was I”

The fact that none of the police officers on the 4.00p.m.-12 midnight shift on the 25th of July knew as to who was responsible for detention of persons arrested, indicates the lack of seriousness with which the issue of detention was treated.

When the circumstances pertaining to the detention were brought to the notice of Mr. Fitzgerald, the Deputy Commissioner of Police, he said that when a prisoner is taken to the

station, the person in charge of the station should make a decision, as to whether that person was lawfully in custody or whether he should have been arrested at all. He went on to say in the policing environment they should have someone with sergeant rank at the station who would make a decision on that and admitted that it was not done in this case.

CONCLUSION OF THE COMMISSION AS TO THE VALIDITY OF THE DETENTION:-

The Commission concludes that there was no basis for the detention and therefore the detention of Mervin was unlawful.

RECOMMENDATION OF THE COMMISSION IN DETAINING PERSONS IN CUSTODY:-

Arrest and Detention of a person is a serious violation of a person's right to liberty unless it is in accordance with the law. It is to be noted that detention in custody does not automatically follow arrest. Before a person is detained in custody there must be a further determination whether the circumstances warrant the detention of the person arrested. Just as much there must be a basis for the arrest there necessarily must be a basis for the detention. Often the basis for both the arrest and detention may be the same but not necessarily always. The arrest may be to prevent the commission of an offence or to prevent the commission of an act which

may amount to a breach of the peace, but once the possibility of the commission of both have been removed the need for detention ceases to exist. Thus there must always be a conscious decision before a person is placed in detention bearing in mind that both detention and arrest are only permitted derogations of the fundamental right of a person to liberty and shall only be exercised on reasonable suspicion of having committed or of being about to commit an offence for the purposes of investigation or preventing the commission of an offence and of producing, if necessary, the offender before a competent court. Arrest or Detention are not powers of arbitrary punishment vested with the police by the Legislature. These powers should not be used to lock up delinquents during week-ends or as a mere precautionary step to help the police with their work.

It must be remembered that according to article 18(10) of the Constitution a person who has been unlawfully arrested or detained has a right to receive compensation from the person who unlawfully arrested or detained that person or from any other person or authority, including the State, on whose behalf or in the course of whose employment the unlawful arrest or detention was made or from both of them. Since detention of a person is a serious matter an officer at or above the level of a Sub-Inspector should take that decision.

CHAPTER 11

TREATMENT OF DETAINEES:-

The detainees sleep on the floor. They are not provided with mattresses. Some of them sleep on towels brought by their families. This was revealed by the detainees and admitted by A.S.P.Writz. When Mr. Fitzgerald, the Deputy Commissioner of Police was questioned by the Commission as to facilities afforded to detainees at the Beau Vallon police station he said according to the Regulations and the training police officers get from the Academy detainees should have some form of mattresses but that was not being followed at the Beau Vallon police station.

Detainees must be treated with dignity worthy of a human being and not subjected to torture, cruel, inhuman or degrading treatment. Otherwise it would be a violation of their fundamental human right enshrined and entrenched in the Constitution.

TREATMENT OF MERVIN WHILE HE WAS IN THE CELL NUMBER 3:-

The police officers (one male and two females) on the 12 a.m. to 8 a.m shift of the 26th of July 2009 admitted before the Commission that none of them did a cell visit to check on the condition of Mervin or the other detainees during their shift hours. W.P.C. Nelli Esparon went on to say that women police officers had been instructed not to do any cell visits. The question

that arises then is why have two women police officers in a shift where there are only three officers. All three police officers on the 12 a.m. to 8 a.m informed the Commission that none of them had been briefed about Mervin by the officers of the earlier shift or any other police officers. It is to be noted that P.C. Issac was present at the police station when the officers of the 12 a.m. to 8 a.m. shift of the 26th of July 2009 arrived. P.C. Issac who claimed to have examined Mervin for any injuries on his head after he fell at the Inquiry desk told the Commission that it was normal for any police officer to be checking on the condition every now and then on a person who has had a fall and hit his head, especially if he had remained in one position. He went on to explain one must check to see whether he is conscious and what is wrong with him.

Mr. Fitzgerald, the Deputy Commissioner of Police said that it was absolutely necessary to observe such a person once in a while to see what his condition is. He went on to say that he should have got medical attention since he had shown signs of injury. The answers to the following questions by the Commission are material:

“Q. The question is he is pushed inside the cell. He falls in that position I believe around 9.30 or 10 p.m. and for 12 hours he remained like that. No one went inside the cell to check his condition. What do you think of that?

A. All prisoners should be viewed every hour. They should be checked to see whether they are either asleep or whatever. Their conditions at the time of inspection should be entered into a record or the Occurrence Book. So he should have been seen at least once every hour.

Q. The reason is from the view of the police officers, he was snoring and they thought he was sleeping. No one opened the cell to go inside. They looked at the cell from outside. They never went inside to see why he was lying in that same position. Do you think that this is an explanation that you would accept?

A. No, I would not accept.

Q. You heard the doctor testified saying “there was a possibility that if the man had been rushed to the hospital, his life could have been saved”

A. I am familiar with cell deaths in the past. Prisoners have died for various reasons: dying from vomit, from heart attack or other reasons. The normal instruction, in fact in the Regulations, they should be viewed every hour. Police officer who does that inspection should satisfy himself or herself that the person is alive or responsive to touch. You do not have to rouse the prisoner but you have to ensure that they respond or that they are moving and alive.

And later on Mr. Fitzgerald went on to state:

A. Every prisoner should be checked. From the environment I come from, if you are drunk, every 15 minutes, if you are not drunk, every half an hour. The Regulations that they are taught here is that they should be checked every hour. Ensure they are conscious and responsive to touch.

Q. And answer the questions put to them.

A. Yes if there are, to see if they respond.”

In this case one wonders what the officers from the 12 a.m. to 8 a.m shift on the 26th of July 2009 along with the other police officers who were not on duty like P.C. Rose, P.C. Dubois, P.C. Issac and P.C. Malbrook, were doing. Their irresponsibility and more so their callousness is regrettable. The fact that no one of them bothered to do a cell visit, of the cell which is adjacent to the Inquiry Desk, gives credence to the version of the detainees that they were drinking and playing music. Anthony M. Brioche a detainee testified that he saw bottles of Takamaka Bay Rum and Guinness with them.

In addition to not bothering to go into Mervin's cell to check on his condition P.C. Egbert Camille took the easy way out of leaving Mervin's morning tea out side his cell without taking the trouble to open the cell and leave it inside. He had told the other detainees to give it to Mervin when he woke up. P.C. Camille admitted that around 9.20 in the morning of the 26th of July detainees had told him that Mervin was not moving. When questioned by the Commission as to why he did not try to find out as to what was wrong with him his excuse was that he thought Mervin was sleeping. P.C. Camille admitted that by looking at a person he would not be able to say whether a person was asleep or dead. He also admitted that if someone had checked on Mervin's condition either during the night or in the early hours of the morning Mervin's life could have been saved.

CHAPTER 12

WHAT CAUSED MERVIN'S DEATH:-

The post-mortem examination of Mervin was conducted by Dr. S.K. Gungadin, Principal Police Medical Officer of Mauritius who was brought in at the instance of the Seychelles Police. Although the Commission has no doubts as to the post-mortem findings of Dr. Gungadin, in view that this was a police cell death case and for the appearance of impartiality it would have been better if services of a Forensic Expert who had no connection to the police force of a country had been recruited and that at the instance of the Ministry of Health. I had in my earlier Maurice Hoareau Commission Report stressed the need to obtain the services of a Forensic Pathologist.

Dr Gungadin did the post-mortem examination on the 4th of August 2009 in the presence of Dr. Betsy Chavez Morales, the Consultant Pathologist, of the Victoria Hospital. His Medico Legal Report dated 7th September 2009 which was marked and produced before the Commission as **Exhibit P8** was received by the Police Department, Seychelles, on the 15th of September and was forwarded to the Commission on the 16th of September, that is almost 6 weeks after the post-mortem examination. This delayed the work of the Commission considerably. Dr. Chavez who was present at the post-mortem examination was summoned by the Commission to testify and comment on Dr. Gungadin's post mortem findings in order to avoid any further delays to the work of the Commission.

Dr. Chavez agreed that the cause of death was as result of the fracture of the skull with intracranial haemorrhages. Dr. Chavez was of the view that the injuries on the head of Mervin were fatal in the ordinary course of nature, namely with the right treatment, the person could have survived the injuries. But she went on to state he would have had only 50% chance of survival even with the right treatment. But the doctor was unable to comment whether we had the necessary facilities to give that treatment. When questioned as to what could have caused the fracture and the resultant internal injuries the doctor was of the opinion that it could have been as a result of a single fall at low velocity. The doctor said that it was possible that Mervin went into unconsciousness soon after the fall and in that unconsciousness or coma he could have passed away. I have earlier stated that Dr. Chavez stated that it was more likely that Mervin sustained the injuries to his head when he was thrown into to cell number 3 and the difficulty for a pathologist to express an opinion about the possible effect upon an individual of a blow to the head since a spectrum of effects is to be expected if a large number of people were to receive exactly the same injury in exactly the same way.

It is to be noted that Dr. Gungadin in his Report had stated that lips and nails were cyanosed. According to Forensic Pathologist Richard Shepherd: "Cyanosis is the blue colour imparted to the skin by the presence of deoxygenated blood in the congested venous system and, possibly in the arterial system." According to him this is a classical feature of asphyxia. Asphyxia results from difficulty in breathing. Mervin had started to snore as soon as his head hit the wall. According to Robin Gonthier "The first time I saw such a thing whereby a person fell down without saying a word or cry out in pain. He just snored". According to detainee Anthony M.

Brioche when he saw Mervin around 7 a.m. he heard Mervin snoring differently from the night before and had thought that that there was something wrong with his breathing. After some time there was no sound of snoring even.

CHAPTER 13

WHAT CAUSED MERVIN TO FALL IN CELL NUMBER 3:-

The Commission does not intend to comment on the criminal liability of those responsible for the fall of Mervin in cell number 3 since P.C. Nelson Rose and P.C. Alfred Dubois have been indicted before the Supreme Court for Manslaughter of Mervin Pierre and their trial is due to commence shortly. The Commission would however set out the facts in relation to Mervin's fall in cell number 3.

After his belongings were taken over Mervin was placed in the main cell by P.C. Rose and P.C. Dubois, with 9 other detainees. Inside the main cell there are three individual cells where sometimes detainees are locked up. Mervin had then started to knock on the door leading from the cell to the Inquiry Office and started to argue with the police officers saying he had done no wrong and wanted to go home saying that his family will be looking for him. The police had asked him to stop making noise but when he continued to do so one of the police officers is alleged to have told him "Pa bez tap sa laport liki ou manman. Taler mon pou antre la annadan mon pe bez kas liki ou manman" (Do not hit the door again. Cunt of the mother. Suddenly I am going to enter inside and hit you and break you the cunt of your mother.) After sometime P.C. Rose is alleged to have put his hand between the bars of the iron door leading to the kitchen from the main cell and pulled Mervin by his long hair. Mervin had then bitten P.C. Rose on the palm of his hand. P.C. Dubois is alleged to have then said "E ou la liki ou mama, ou vin mord gard dan kordgard" (hey you cunt of your mother, you come to bite police officers in the police station. Just wait). P.C. Rose denied that Mervin bit him and went on to state that they did a

test on him the next day and even took a photograph indicating that there was no sign of it. But according to both P. C. Jean and P.C. Issac P.C. Rose had told them that Mervin had bitten him on his palm and P.C. Jean had told P.C. Rose to write it down on the Occurrence Book. Thereafter P.C. Rose and P.C. Dubois are alleged to have come into the main cell grabbed Mervin by his arms, dragged him on the floor, pulled him up and stood him up on his feet and then pushed him inside cell number 3. According to the detainees Mervin did not try to fight the two police officers. Mervin had fallen heavily inside cell number 3 striking his head on the wall with a sound. He was in a sitting position with his head tilted towards his shoulders as depicted in photograph number 11 produced in Photo album as Exhibit 3 before the Commission. According to all the detainees Mervin continued to be in that position until he was found dead the following day. After pushing him in cell number 3 P.C. Rose is alleged to have locked the cell with a padlock. Then he had gone outside and said: "Pa in aret movi" (Has he not stopped disturbing). After Mervin was pushed inside the cell number 3, no police officer went in to that cell to check on his condition. Late at night P.C. Jean and P.C. Rose had looked into Mervin's cell from outside and said that Mervin was asleep and that they would let him go the following day. On the morning of the 26th of July Anthony M. Brioche had drawn the attention of the police officers to Mervin's condition but had been rebuked saying not to interfere with their work: "Les gard fer son louvarz". Brioche had drawn the attention of the police because when he got up that morning around 7 a.m. he heard Mervin snoring differently from the night before and had thought that that there was something wrong with his breathing. When P.C. Camille came a second time bringing Mervin his breakfast his family had brought him Brioche had challenged P.C. Camille again for not checking on Mervin. P.C. Camille had then

gone into the cell of Mervin and come out saying “Mon Krwar sa boug in mor” (I think this man is dead).

CHAPTER 14

RIGOR MORTIS AND THE POSSIBLE TIME OF MERVIN'S DEATH:-

Although not 100% accurate one of the methods to determine the time of death is the onset, completion and passing of rigor mortis namely the stiffening of muscles after death. Rigor mortis is, at its simplest, a temperature-dependent physicochemical change that occurs within muscle cells as a result of lack of oxygen. Sir Sydney Smith has stated: "As rule rigidity is present to quite definite extent 4 or 5 hours after death, it is usually present in the muscle of the lower jaw in 3 hours or even earlier. After its appearance in the jaw face and neck, it successively invades all the muscles of the body, passing to the chest, arms, trunk and lastly the legs. Post mortem rigidity is usually complete in about 8 to 12 hours after death and lasts a variable time from 10 hours to 72 hours or even longer. As a rule it begins to pass off in about 36 hours in summer and about 48 hours to 72 hours in winter." Sir Smith goes on to state "In tropical countries rigor may be very rapid in onset and of very short duration." Professor Lester Adleson has stated: "In the average person who dies at ordinary room temperature rigor usually starts to appear within 2 to 4 hours after death, is usually complete within 6 to 12 hours and then usually begins to pass off between 24 to 36 hours." Richard Shepherd has stated: "A crude but useful aide-memoire is: Body feels warm and flaccid from death up to 3 hours, the body feels warm and stiff from 3 hours to 8 hours after death, body feels cold and stiff within 8 to 36 hours after death, and body feels cold and flaccid 36 hours after death." Another forensic Pathologist states: "In India it usually commences in one to two hours after death, takes about 12 hours to pass off". Hemamal Jayawardena states: "The pattern of onset of rigor can be used

for the approximate timing of death. Approximate timing of onset 2 hours in jaw, 2 to 4 hours in neck, 4 to 6 hours in chest and abdomen, 6 to 8 hours large joints and then 8 to 10 hours, small joints.” After listening to the comments of these forensic pathologists referred to by the Commission, Dr Chavez stated that rigor mortis is normally complete within 8-12 hours. But she said that convulsions and hyperthermia of which she is not aware of in the instant case could have accelerated the onset and completion of rigor mortis. Once rigor mortis is complete it stays on for a period of between 8 to 36 hours before it begins to pass of. She therefore stated it is difficult to be accurate as to when rigor was complete.

Sub- Inspector Tirant stated that when he photographed Mervin at the Beau Vallon Police Station around 1 p.m. on the 26th of July 2009 his body was a “bit stiff and bit cold”. Sgt Brian Dogley stated that when he examined Mervin at around 11 to 11.30 a.m. his hand was cold. P.C. Egbert Camille stated that when he touched Mervin’s body about 11 to 11.30 a.m. his arm was stiff and cold. None of them have been trained or have experience in checking dead bodies. Esther Simone Francourt a Paramedic who examined the body of Mervin at 12 noon said that “the body was really hard, it was cold”. In answer to a question by the Commission she said that even his legs and feet were cold and stiff and looked as if rigor mortis was complete. Dr. Franky Michel Vital who examined Mervin around 1 p.m. and certified him dead said that the body was stiff and cold and Mervin was already in rigor mortis.

Anthony M. Brioche said that when he got up that morning around 7 a.m. he found Mervin snoring differently to that of the previous night. Later he did not hear him snore. According to

Rod Steward Payet “At around 7.30 I heard as if somebody is taking his last breath and then everything stopped”.

The Commission concludes taking all the above factors into consideration that Mervin had died about 6 hours before he was certified as dead by Dr. Franky Vital. The fact that the police officers at the Beau Vallon police station did not know that a man had been in the process of dying in their cell, when his life could have been possibly saved and was dead for almost 4 hours before P.C. Egbert Camile found him in a motionless and unresponsive state is a serious affront to the Seychelles Police Force itself.

CHAPTER 15

USE OF ABUSIVE LANGUAGE BY CERTAIN POLICE OFFICERS:-

It is clear from the statements of the detainees that to some police officers the use of abusive language is the norm whether it is to a difficult detainee or any one who appears to them to be challenging their conduct. The abusive ‘filth’ by which Mervin had been sworn at by some police officers tarnishes the reputation of the Seychelles Police Force.

When Mervin’s sister Joanna Cecile Nicette telephoned the Beau Vallon police station around 5. p.m. on the 26th of July, merely to get confirmation of the death of her brother Mervin to place the death notice on SBC she had spoken to W.P.C. Lia Juleitte. Joanna had overheard Constable Juliette telling another police officer in the background “Ki I kwar? Nou kin touy son frer? Dir li al langet liki son manman” (What does she think? That it was us who killed her brother? So send her over, cunt of her mother).Joanna had held on to the telephone but Constable Juliette had not given any information and Joanna had to switch off. Constable Juliette admits that she received a call from Joanna but denies having said what is being attributed to her. She also admits that she did not give the information sought. She also stated that Joanna had complained that day itself to the Beau Vallon police about being sworn at by her.

When Mr. Fitzgerald, the Deputy Commissioner of Police was questioned by the Commission about police officers swearing in filth at detainees at the police station or to those who call the police station he said that this “should not be tolerated at all.”

CHAPTER 16

POLICE OFFICERS DRINKING WHILE ON DUTY:-

P.C. Marcus Jean admitted that he had said in his statement made to the police that: “At 18.05 hours PC Issac, PC Rose and PC Dubois went out to Le Niol to collect his child and when they came back I noticed that their eyes were reddish colour but appeared to be under the influence of drinks, but not drunk”. He also admitted before the Commission that the said police officers were under the influence of liquor and by 6 p.m. they had started drinking. It is to be noted that P.C. Rose was involved in the arrest of Mervin, that all three officers were present at the Inquiry desk when Mervin had his first fall, that all three officers were involved in the detention of Mervin and constables Rose and Dubois are alleged to have been involved in the fall of Mervin in cell number 3. All the detainees testified before the Commission that police officers were drinking and playing music at the Inquiry Office on the night of the 25th of July although denied by the police officers.

When Mr. Fitzgerald, the Deputy Commissioner of Police was questioned by the Commission about this he said that the Internal Affairs Department of the Police had carried out an investigation into what was happening at the Beau Vallon police station that night and there have been reports of officers drinking in the Beau Vallon police station. He said that action has been taken against certain officers, that a number of people have been transferred from Beau Vallon police station since July and remedial action taken to curtail what has been happening at the station.

CHAPTER 17

DISMISSED OFFICERS CONTINUING TO PERFORM DUTIES AT THE BEAU VALLON POLICE STATION:-

P.C. Dubois who was involved in the detention of Mervin on the evening of the 25th of July and who has been indicted before the Supreme Court for the manslaughter of Mervin Pierre had been dismissed from the Police Force w.e.f the 13th of July 2009, namely 12 days before his involvement in the incidents at the Beau Vallon police station. Police officers at the Beau Vallon police station including P.C. Dubois claimed that they were unaware of the dismissal of P.C. Dubois from the police force.

When Mr. Fitzgerald, the Deputy Commissioner of Police was questioned by the Commission about this he said that “It is a management failure. He should have been informed. As soon as the order is issued and decision made the person involved should be informed by a senior officer of the content of the order. The content of the order should have immediate effect. There was a management system failure. This is the only way this can be explained.”

CHAPTER 18

CONCLUSION OF THE COMMISSION:-

This is one of those cases where everything the police officers involved in this case did were wrong and unlawful from the time of the arrest of Mervin up to the time of his death:-

- 1) Mervin's arrest was unlawful,
- 2) The way he was dealt with at the Inquiry Office was undignified and unwarranted,
- 3) Mervin's detention was unlawful,
- 4) The use of abusive language by certain police officers while Mervin was in the cell was shameful,
- 5) The way he was pushed into individual cell number 3 was brutish,
- 6) The way the police cared for him, namely officers in all three shifts from 4 p.m. on the 25th of July to 12 noon on the 26th of July 2009 was irresponsible, callous and unpardonable,
- 7) The way some police officers behaved in the Inquiry Office area on the night of the 25th of July going on to the 26th morning was unbecoming,
- 8) The behavior of certain police officers of the Beau Valon police station on the 25th and 26th of July, their arrogance and insolence, their drunkenness, their use of abusive

language, their lack of competence and poor judgment and their untruthfulness before the Commission leaves much to be desired.

The conduct of certain police officers involved in this case simply shows that they consider themselves a law unto themselves. The Commission particularly wishes to note that there is a tendency among many police officers to shun away from the truth and to cover up for the deliberate and malicious wrongs of their colleagues. They have tarnished the image of some of their colleagues who are held in high esteem by society. If this type of behavior is permitted to go on citizens will soon start to distance themselves from the police and lose the confidence they have in the police. A police Force should always be people-friendly and try to build up a good rapport with the people they have been called upon to serve. The Commission recommends to the Commissioner of Police to take disciplinary action against those officers whose behavior has been specifically found to be wanting in this Report and those whom the Commissioner of Police feels should also be dealt with on the basis of this Report.

Mervin Pierre came by his death due to the wrongful action of some of the police officers. I therefore recommend that his legal heirs be compensated by the State. The Police owe a public apology to the members of his family.

CHAPTER 19

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS:-

- It is clear that there has been a serious lapse in the investigation into the disappearance of little Abdul. The police have rushed to conclusions and then closed the matter as to little Abdul's disappearance associating it only with his death and that at the hands of his father Morris Hoareau. It is the recommendation of the Commission to leave the issue of what happened to little Abdul open and investigate the matter further. It is recommended that the police when investigating cases should consider all possibilities and not rush to conclusions.
- The Commission rejects completely the police version as to how Morris came by his death. The police are responsible for the death of Morris Hoareau in not taking care of him while he was in their custody and having him handcuffed in a dangerous terrain where he needed his hands free to balance himself. The Commission recommends that the Government compensates the legal heirs of Morris Hoareau.
- The Commission recommends that the Commissioner of Police be directed to detail a senior police officer to investigate the death of Morris Hoareau. It also requests of the Hon. Attorney General to consider preferring charges against Cpl Georgie Freminot under section 102 of the Penal Code for Perjury and the Commissioner of Police to take disciplinary action against such officer. Disciplinary action is also recommended against

those police officers referred to in this report who failed to speak the truth before the Commission.

- The Commission recommends that services of a Forensic Pathologist should be obtained to assist in the investigation of serious crimes involving injuries.
- There were several faults and shortcomings on the part of the Police, as set out in this Report; in the manner they handled this case. They should be corrected by administrative circulars which should set out the procedure for disciplinary action against those who fail to comply with the directions set out in the said circulars.
- The general public should be sensitized that complaints against the Police can be made to the National Human Rights Commission and the Ombudsman.

Chapter 20

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