



# SEYCHELLES HUMAN RIGHTS COMMISSION

ANNUAL REPORT 2022

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HUMAN DIGNITY - BEDROCK HUMANITY

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Annual Report 2022

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# SHRC LEGISLATION AND FUNCTIONS

## Legislation

The Seychelles Human Rights Commission (“Commission”) exercises its mandate under the *Seychelles Human Rights Commission Act, 2018* (“Act”).

The *Act* establishes the Commission and outlines its powers and functions. The *Act* defines human rights and freedoms by reference to Chapter III of the *Constitution of the Republic of Seychelles* (“*Constitution*”).

## According to Sections 14 (1) (a) the Commission is competent and obliged to:

- (i) make recommendations to the ministries at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and this Act, as well as appropriate measures for the further observance of such rights;
- (ii) undertake such studies for reporting on or relating to human rights as it considers available in the performance of its functions or to further the objects of the Commission; and
- (iii) request any head of the organisation or institution or the principal secretary of any ministry or department to supply it with

information on any legislative or executive measures adopted by it relating to human rights; and

## Sections 14 (1) (b)

- (i) Develop, conduct or manage information programmes and education programmes to foster public understanding and awareness of Chapter III of the *Constitution*, the *Act* and the role and activities of the Commission;
- (ii) Maintain, as far as is practicable, close liaison with institutions, bodies or authorities with similar objectives to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances;
- (iii) Liaise and interact with any organisation which actively promotes respect for human rights and other sectors of civil society to further the objects of the Commission;
- (iv) Consider recommendations suggestions and requests concerning the promotion of respect for human rights as it may receive from any source;

- (v) Review government policies relating to human rights and may make recommendations;
- (vi) Monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission;
- (vii) Prepare and submit reports to the National Assembly pertaining to any such convention, treaty, covenant or charter relating to the objects of the Commission and;
- (viii) Carry out or cause to be carried out such studies concerning human rights as may be referred to it by the President, and the Commission shall include in a report referred to in section 20(1) a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate.

**Section (4) The Commission is competent to -**

- (a) Investigate on its own initiative, or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall assist the complainant and other persons

adversely affected thereby, to secure redress, and it may arrange for or provide financial assistance to enable proceedings to be initiated in a competent court for necessary relief or may direct a complainant to an appropriate forum; and

- (b) Initiate proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons, including proceedings relating to the constitutionality of a law or the provisions of a law;

## Independence of the Commission

**Section 3 (2) of the Act provides that**

***“The Commission shall be a self-governing, neutral and independent body and shall not be subject to the direction or control of any person or authority”***

## Letter to His Excellency the President of the Republic of Seychelles

01<sup>st</sup> March 2023

**His Excellency  
The President of the Republic of Seychelles  
Office of the President  
State House  
Victoria**

**Dear Mr. President,**

**Re: Seychelles Human Rights Commission Annual Report 2022**

Pursuant to section 22 of the *Seychelles Human Rights Commission Act, 2018*, I am pleased to submit the Annual Report of the Seychelles Human Rights Commission (“Commission”) for the year ending 31 December 2022.

This report is compiled on the basis of records held by the Commission, as duly provided by the Chief Executive Officer and his staff.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Bernard Renaud', is written over a light blue rectangular background.

Justice Bernardin Renaud (Rtd)  
**CHAIRPERSON**

## Letter to the Minister of Finance, National Planning and Trade

01<sup>st</sup> March 2023

**Mr. Naadir Hassan**  
**Minister of Finance, National Planning and Trade**  
**Liberty House**  
**Victoria**

Dear Mr. Hassan,

**Re: Seychelles Human Rights Commission Annual Report 2022**

Pursuant to section 22 of the *Seychelles Human Rights Commission Act, 2018*, I am pleased to submit the Annual Report of the Seychelles Human Rights Commission (“Commission”) for the year ending 31 December 2022.

This report is compiled on the basis of records held by the Commission, as duly provided by the Chief Executive Officer and his staff.

Yours sincerely,



Justice Bernardin Renaud (Rtd)  
**CHAIRPERSON**

# The Commission

## Organisational Structure





## Commissioners

In accordance with Section 5 of the Seychelles Human Rights Act, 2018, the President of the Republic of Seychelles in consultation with the Speaker of the National Assembly appoint a Chairperson, a Deputy Chairperson and three Commissioners selected from a panel of three candidates for each post proposed by the Constitutional Appointments Authority and such appointments shall be published in the Gazette.

The following persons were appointed by the Constitutional Appointments Authority:

- *Justice Bernardin Renaud (Rtd)* - *Chairperson*
- *Mrs. Michelle De Lacoudraye Harter* - *Deputy Chairperson*
- *Mrs. Barbara Carolus-Andre* - *Commissioner*
- *Mr. Roger Toussaint* - *Commissioner*
- *Ms. Michelle Margueritte* - *Commissioner*



*From left to right: Mr. Roger Toussaint, Ms. Michelle Margueritte, Mrs. Barbara Carolus-Andre, Justice Bernardin Renaud (Rtd) and Mrs. Michelle De Lacoudraye Harter*

# Staff of the Commission



Mr. Elvis Julie  
Chief Executive Officer



Mr. George Robert  
Legal Director



Mrs. Nicole Larsen  
Senior Monitoring Officer



Mr. Winsley Cedras  
Senior Investigation Officer



Ms. Sophie Lagrenade  
Senior Education & Training Officer



Ms. Xenia Pantazopoulou  
Human Rights Analyst



Ms. Gina Come  
Communications Officer



Ms. Marie Cecile Francoise  
Investigator



Ms. Colvine Julienne  
Registrar



Ms. Karen Jean-Baptiste  
Senior Finance Officer



Ms. Sheila Vidot  
Administration Officer



Ms. Jona Ernesta  
Client Assistant



Mr. Kenny Perrault  
Driver / Messenger

# Chairperson's Foreword



It gives me great pleasure to present the Seychelles Human Rights Commission ('the Commission') Annual Report for the year ending 31 December 2022. This report reflects the work conducted as per the Commission's mandate under the Act.

The year 2022 has marked some momentous milestones for the Commission which includes the Memorandum of Understanding ('MOU') between the Commission and the Supreme Court of Seychelles. Signed by the Chief Justice and myself, the MOU aims at enhancing the collaboration between the Supreme Court of Seychelles and the Commission through training and the development of procedures consistent with the Paris Principles.

The Commission has undertaken a range of activities during the year as per its mandate to promote and protect human rights in Seychelles. These included, monitoring the implementation of national, international and regional conventions, receiving and investigating complaints, human rights

promotion and education and a variety of human rights trainings and sessions made possible under the EU funded project.

The Commission filed a joint petition before the Constitutional Court of Seychelles to review the Constitutionality of the Constitution of Seychelles (*10<sup>th</sup> Amendment*) Act, 2022.

The Commission is leaping into 2023, as we look forward to enhance the collaboration with public authorities to ensure that all domestic, international and regional human rights standards are institutionalized. The Commission is anticipating greater engagement with the United Nations and its agencies as we pave the way to being fully 'Paris Principles' compliant.

Moreover, the Commission recognizes the need to be more visible to and engage with the public on human rights issues, which is why the Commission intends to emphasize on immediacy of human rights publications through mainstream media.

I would like to take this opportunity to express my gratitude to the Commissioners, the Chief Executive Officer and the Commission's team of dedicated staff for all their hard work and passion for human rights.

A handwritten signature in blue ink, which appears to be "Bernard Renaud". The signature is written in a cursive style with a large initial "B" and "R".

**Justice Bernardin Renaud (Retd)**

**Chairperson**

# 2022 in Review

The following provides an overview of the key human rights achievements in 2022

## MILESTONE

The Commission signed a Memorandum of Understanding with the  
Judiciary of Seychelles



The Commission and the Judiciary of Seychelles (“Judiciary”) signed a Memorandum of Understanding (“MoU”) on Wednesday, 27<sup>th</sup> April, 2022. The purpose of the MoU is to create a mechanism for cooperation between the Commission and the Judiciary. By signing the MoU, the Commission and the Judiciary agree to cooperate with each other through training and the development of procedures consistent with the Paris Principles, for a period of two years from the date of the MoU’s signature.

The signing took place between Chief Justice Rony Govinden and the Chairperson of the Commission, Justice Bernardin Renaud at the Palais De Justice.



# MONITORING

## Monitoring visits to places of Detention

*(Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*



The purpose of the aforementioned Convention is to prevent and eradicate the use of torture and other cruel, inhuman or degrading treatment or punishment, and to ensure accountability for acts of torture. Section 14 (1) (b) (vi) of the Act empowers the Commission to monitor the implementation of and compliance with international and regional conventions, treaties, covenants and charters relating to the objects of the Commission

A team spearheaded by the Senior Monitoring Officer successfully conducted a total of 9 monitoring visits at places of detention, including on Praslin and La Digue. These monitoring visits aim to assess whether the detention conditions at places of detention throughout Seychelles are up to the required domestic and international standards.

# JUDICIAL REVIEW

The Commission, the Ombudsman and the Bar Association of Seychelles lodged a joint petition with the Constitutional Court.



The Seychelles Human Rights Commission, the Ombudsman and the Bar Association of Seychelles lodged a joint petition with the Constitutional Court on Tuesday 3th September 2022 for a review of the constitutionality of Article 3 of the Constitution of the Republic of Seychelles (*Tenth amendment*) Act, 2022, which empowers the Defence Forces to carry out internal law enforcement in Seychelles outside the context of a public emergency.

The three organisation shares the concern that this *Tenth Amendment* undermines the democratic protections afforded by the Constitution, in particular due process, the rule of law and human rights. The basic contention of the petition is that the Constitution may not be amended to erode any of those basic democratic structures or guarantees or otherwise undermine its democratic purpose – at least not by the procedure adopted in the Tenth Amendment.

Concerns were raised before the *Tenth Amendment Bill* was presented to the National Assembly but regrettably were not given the opportunity to engage with the National Assembly or the Bills Committee. The parties believes that the legislative process followed has impacted the fundamental principles on which our democracy is founded.

Furthermore, the parties believe these to be of sufficiently high national importance to merit a determination of the constitutionality of the *Tenth Amendment*, including the process involved in its enactment. Such determination will provide guidance for future amendments to the Constitution and contribute to the jurisprudence of our sovereign democratic Republic.

## EDUCATION & AWARENESS

### CONSTITUTION DAY - 18 JUNE 2022

As part of its mandate under Section 14 (1) (b) (i) of the *Act*, the Commission organised an awareness campaign to commemorate Constitution Day. The campaign was aimed at sensitising the public to the *Constitution*, more precisely Chapter III: the Seychellois Charter of Fundamental Human Rights and Freedoms.

The Commission organised a diversity of activities to reach out to various groups of society, namely a mini-expo, a four-day social media campaign and a radio quiz game. The Commission engaged with the public by setting up stalls in Victoria and Providence, wherefrom the staff disseminated informational material and responded to human rights-related queries.

### WORKSHOP WITH THE MEDIA COMMUNITY

The Commission organised a Human Rights Working Session with media representatives on Wednesday, 20<sup>th</sup> April, 2022 at the SAVOY Resort and Spa.

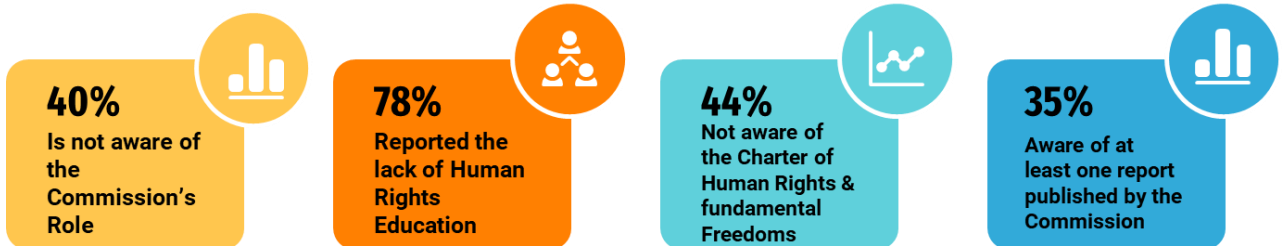
The Working Session was facilitated by the Commission's Legal Director, Mr. George Robert, who focused on the mechanics of the *Constitution* in the context of human rights.

In attendance were H.E. Mr. Dominique Mas (Ambassador for France in Seychelles), Hon. Justice Bernardin Renaud (Chairperson, Seychelles Human Rights Commission), Mrs. Nichole Tirant-Gherardi (Ombudsman), Ms. Thereza Dogley (CEO, Information Commission), Mr. Ibrahim Afif (CEO, Media Commission), journalists, journalism students from UNISEY, and staff of the Commission.



## HUMAN RIGHTS SURVEY

As part of the Constitution Day activity the Commission conducted a human rights survey to test the knowledge of members of the public on the Commission's mandate, chapter III of the Constitution and human rights in general.



A **survey** conducted with the participation of 70 members of the public on the occasion of Human Rights Day in December 2021 revealed the following results:

- **93% said they knew of the existence of the SHRC**
- **75% of them knew of the SHRC through the media**
- **10% reported HR education as one of the mandates of the Commission while 48% said it was to protect and defend the human rights of people**
- **40% were not aware of the role of the Commission**
- **35% reported being aware of at least one of the reports published by the Commission while 65% had not heard of any**
- **Those reporting hearing about the reports, stated that they had heard about the restrictions on entry for Seychellois citizens, (10%)- suspension of the thirteenth-month pay under the Employment Act, (35%) -conditions of places of detention (Perseverance Police Stations) and on arrest, (25%)- detention and deportation under the Immigration Decree. (30%)**
- **78% reported that there was insufficient HR education in Seychelles**
- **56% reported being aware of the existence of a Charter of Human Rights and Fundamental Freedoms in the Seychelles Constitution while 44% were not aware.**

The survey revealed that while there seems to be a general understanding of HR in Seychelles and on the relevant issues, there is need for more education as reported by the participants themselves.

However, it must be recognised that human rights education must be supported with a strong commitment by the Government especially in some critical areas like the Police. Additionally, the SHRC must also be allowed to play a more prominent role in the national discourse to ensure conformity with the Constitution.

Stronger commitment is needed from the Police and Immigration Department to ensure the realisation of activities projected with these two sectors.



# The Commission's Strategic Priorities<sup>1</sup>

## **Priority 1**

Human Rights Promotion and Communications

## **Priority 2**

Monitoring

## **Priority 3**

Complaints and Investigations

## **Priority 4**

Review of Legislations & Policies

## **Priority 5**

Institutional Strengthening

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<sup>1</sup> Annex 1 – Strategic Priorities

## Priority 1: Human Rights Promotion and Communications

The Commission is mandated under section 14 (1) (b) (i) of the *Act* to develop, conduct and manage information and education programmes to foster public awareness of **Chapter III of the Constitution**, the *Act*, and the role and activities of the Commission.

### EU Project “Human Rights Promotion in Seychelles”

On the 8th October 2021, the SHRC hosted the launching of the "Human Rights Promotion in Seychelles" project. As per its Act, the SHRC is mandated to promote and protect human rights in Seychelles and as such, the project will complement the programmes of the Commission. The project has been funded by the EU and will span for a period of three years.

It is important to note that currently the Education and Training aspect of the Commission is being captured under the EU Project. The sessions and training are facilitated by the Senior Education and Training Officer, the Legal Director and the Project Coordinator.

The beneficiaries of the sessions included various government departments, civil society and schools. The participants were very receptive to the training and there has been a proposal for more in-depth sessions which focusses on specific human rights issues.

#### Beneficiaries

**Government Officials** in pre-service and service including law enforcement officers are trained on how to apply a human rights-based approach in the discharge of their duties, especially when dealing with cases involving vulnerable groups. Some organisations like Prison Division, Police Academy, Probation Services, Ministry of Education, Social Services and Family Affairs have shown the desire to go beyond the educational sessions and to identify areas for

more concrete actions that will result in measurable impacts. Efforts to engage with the Police and Immigration, two critical organisations, have proven difficult so far.

## **Civil Society, Media Community and Vulnerable Groups**

Citizens, media community, civil society and especially vulnerable groups were sensitized on respect for human rights.

- *Members of the media were invited in a half-day session to launch the project in the presence of the French Ambassador. While attendance can be termed as satisfactory, 15 journalists out of the confirmed 25 participants showed up for the session.*
- *The NGO sector however had a relatively poor turn-out. 12 participants representing CEPS and 8 representing Father's Association, ARID and WASO attended the 2 sessions that were organized.*
- *The sessions with staff of the Ministry of Family Affairs, Social Services Department, a group of elderly citizens, a group of disabled persons, GBV advocates and the National Council for Children.*

## **Primary and Secondary Schools**

All projected sessions were organized with 6 groups of school children from secondary schools on Mahe, Praslin and La Digue. The students were class room prefects, their deputies and representatives of students' bodies in their respective schools.

They were provided with educational materials and encouraged to share the knowledge with their counterparts. Students on Mahe were hosted at the Human Rights Information and Legal Centre at the office of the Seychelles Human Rights Commission at Ile de Port.

### ***Attendance***

- ***10 Students attended from Plaisance Secondary School***
- ***8 from Mont Fleuri Secondary School***
- ***13 from English River Secondary School***
- ***16 from Perseverance Secondary School***
- ***17 From Praslin Secondary School***
- ***16 from La Digue Secondary School***

## Training of Personal, Social and Careers Education

Head-Teachers and their Deputies as well as Personal Social and Civil Education teachers were identified for training so that they can transmit the content of the sessions to their respective students and staff members. They were provided with additional educational materials to share at their schools. In all 21 PSCE Teachers and 21 Head-Teachers and Deputies attended the sessions.

A special survey was conducted with PSCE Teachers to gauge their views on how HR is being taught in schools, how comfortable they are with teaching HR and whether they have enough information to deliver up-to date and child-friendly content to their students.

*The results of the survey with 21 PSCE Teachers are as follows:*

- *100% reported that some form of HR is being taught through the PSCE Curriculum at least once a term in the Secondary schools*
- *There is however not one single source of instruction that is used for HR education. 60% of teachers reported using the internet as a medium to source human rights materials while most were using a simplified version of the Seychelles Constitution (80%).*
- *In terms of the effectiveness of the materials: 57% felt materials were well suited for teaching HR, 72% felt they were outdated, 48% felt they were not child-friendly and 24% felt they were too complicated.*
- *81% of PSCE Teachers reported having undergone some form of training on HR*
- *62% stated they felt qualified to teach HR, 23% felt they were not qualified with the remaining 15% not answering the question.*
- *In terms of student motivation, 60% felt students were motivated to learn of HR while 40% were not motivated.*
- *25% reported that the level of interest depended on the content/strategies used.*
- *Teachers reported that some students did not understand the purpose of HR education with some even comparing it to politics.*
- *The majority of teachers agreed that HR Education should start at an earlier age and become a more prominent part of the Curriculum.*

It is clear from the two surveys conducted (with the general public and PSCE Teachers) that there is a strong desire for greater human rights education in Seychelles. In order for the education sector to play a more active role in this process, it is recommended that the PSCE Curriculum is reviewed with the aim of developing new, more relevant, home-grown, and interactive and more child-friendly materials. Teacher training is another area where there needs to be greater education because it became clear through the sessions that some teachers were bringing their personal views and prejudices in the teaching of HR.

It is evident that the above cannot be realized within the mandate of this Project but the sessions with school children, Head-Teachers and PSCE Teachers have revealed that there is real interest and commitment within the sector. A greater focus on the Primary, Secondary and Tertiary education sector will allow for greater impact and more meaningful change in Seychelles.

The results of the actions have been positive. Participants have expressed appreciation for the sessions and revealed that they were not fully aware of their rights as individuals but also as duty-bearers. The sessions focused on the Seychellois Charter of Fundamental Rights and Freedoms which were delivered through PowerPoint presentation, human rights video streaming, group activities and question and answer sessions. Using the 25 Human Rights enshrined in the Seychelles Constitution allowed for a holistic approach that mainstreamed cross-cutting issues like the promotion of human rights, gender equality, democracy, good governance and children's rights.



## **Outcome 1.1.**

### **Progressive understanding of human rights laws and protection amongst duty bearers**

Almost 60% of the projected activities have so far been realised. This is because the remaining activities are scheduled for the remaining 3 months of this year and due to the fact that the reporting period for this year has been cut off to August.

The sessions have shown that there is a definite lack of awareness on human rights issues and the Constitution in Seychelles. Ingrained cultural beliefs and assumptions as well as overtly religious views have been identified as challenges. In the absence of clear operational procedures and guidelines at organisational level, confusion and in some cases a laissez-faire attitude will continue to exist and HR violations will continue to occur despite an increased level of education and awareness.

## **Outcome 1.2 and 1.3**

### **Increased digital engagement and greater availability of human rights educational content to rights holders.**

The Commission has developed a wide range of promotional materials including booklets, posters, promotional brochures and social media contents in the form of shareable images and short video clips. These promotional materials aimed at providing a more visual understanding of human rights, the commission and chapter III of the Constitution of Seychelles.

Social Media contents have enabled the Commission to reach a wider audience especially the younger users to learn more about the Commission's work, human rights and access news and information. The level of engagement on the Commission's social media platform, more specifically Facebook, has increase during the year 2021.

Social has been another great tool in promoting and awareness raising of the United Nations commemorative days. The Commission streamlined the contents to provide greater visibility, specifically to Human Rights related days. The Commission published a total of 26 content in relation to the UN Days, through eye-catching posts and videos.

### ***Human Rights United Nations Commemorative Days***

- *International Day of Education*
- *International Day of Human Fraternity*
- *World Day of Social Justice*
- *Zero Discrimination Day*
- *International Day for the Elimination of Racial Discrimination*
- *World Health Day*
- *World Press Freedom Day*
- *International Day of Families*
- *World Day against Child Labour*
- *World Elder Abuse Day*
- *International for the Elimination of Sexual Violence Conflict*
- *World Refugee Day*
- *World Day against Trafficking in Persons*
- *World Humanitarian Day*
- *International Day of Democracy*
- *International Day of Peace*
- *International Day for Universal Access to Information*
- *International Day of Non Violence*
- *World Mental Health Day*
- *International Day for the Eradication of Poverty*
- *United Nations Day*
- *International Day for Tolerance*
- *International Day for the Elimination of Violence against Women*
- *Human Rights Day*

## Way Forward

### Human Rights Sessions

*The Commission anticipates to continue and increase its education programme throughout 2023 under the EU Project. The Commission will be targeting members of the public, Secondary Schools and Tertiary Education Institutions. Moreover, there is a need to conduct sessions with entities which the Commission has issued Investigation and Analysis Report (IAR) to, in relation to the monitoring visits conducted at places of detention. This includes entities in the purview of Ministry of Internal Affairs.*

### Communications and Visibility

The Commission's purpose of communication and visibility is to ensure that any communications on the Commission's activities, news and information is consistent with its values and priorities.

The Commission is anticipating the following:

- *Enhance the visibility of the Commission's activities using all communication methods (newspaper publications, digital media, social media and website);*
- *Revamp the Commission's website to make it more accessible and user friendly;*
- *Ensure that the Commission is actively present on all major Social Media Platforms;*
- *Create more digital contents on its Social Media Platforms;*
- *Provide visibility through media programmes in collaboration with stakeholders and media houses;*
- *Conduct human rights promotion sessions with members of the public and other related target groups on human rights topical issues; and*
- *Establish links and collaboration with local international organizations in the protection and promotion of human rights.*



## Priority 2: Monitoring National and International Human Rights Standards

Section 14 (1) (b) (vi) of the Seychelles Human Rights Commission Act, 2018 provides that

*The Commission-*

***Shall monitor the implementation of, and compliance with international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission.***

As such it is essential to recognise that the Commission has a key role to play in the monitoring of international human rights obligations within the governance mechanisms of the Government and the reinforcement of the Rule of Law.

### Outcome 2.1.

#### Improved conditions of places of detention

##### Monitoring Visits to Places of Detention

In accordance with Articles 18 & 16 of the *Constitution*, Articles 10 & 11 of the *Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment* (“CAT”), and Articles 9 & 10 of the *International Covenant on Civil and Political Rights* (“ICCPR”), the Commission conducted monitoring visits to places of detention. The monitoring visits’ main focus was to observe and make recommendations to improve the conditions of detention and procedures relating to arrest and detention.

In 2022, the Commission visited a total of 9 places of detention across Mahe, Praslin and La Digue, including Mont Fleuri, Anse Aux Pins, Grande Anse (Praslin), Baie Ste Anne (Praslin), La Passe (La Digue), Anse Royale, Anse Boileau, Port Glaud and Quatre Borne in Takamaka.

## Methodology

The monitoring exercise undertaken at the Police Stations focused on: Conditions of places of detention and procedures relating to arrest and detention through the following interventions –

- (1) Quantitative: through measurements; and
- (2) Qualitative: in the form of observations and interviews from a checklist.

## Reporting

### 1. Monitoring Report

The aim of the monitoring report is to carry out an audit of places of detention in Seychelles with an objective to raise the standards so that Seychelles can meet its domestic and international obligations. The report focuses on the observations made on detention conditions at the Police Stations.

### 2. Investigations and Analysis Report (IAR)

Investigation and Analysis Reports (“IARs”) in the context of detention monitoring are legal reports that itemise the observable and measurable conditions at places of detention visited by the Commission. Thereafter, the conditions are juxtaposed against the domestic and international human rights standard, whereby a comparative legal analysis enables the Commission to issue an opinion and a set of recommendations.

These recommendations aim to guide the State in raising the standard of conditions at places of detention to effectively meet the State’s minimum core obligations, as per the *Constitution of the Republic of Seychelles* read with the *International Covenant on Civil and Political Rights* (“ICCPR”) and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“CAT”), both of which the State ratified on May 5<sup>th</sup>, 1992.

**Some Observations noted during monitoring visits**

**includes:**

- *Inadequate living space inside the cell;*
- *Lack of in-cell ventilation and excessively humid climate;*
- *Inadequate natural and artificial light;*
- *Lack of hygienic, fully functional and private sanitation facilities;*
- *Lack of provision for hygiene and sanitary products;*
- *Lack of provision of direct drinking water and seating arrangements;*
- *Lack of provision of food that is consistently health healthy and safe to consume;*
- *Lack of provision for sleeping arrangements, such as mattresses, pillows, blankets, as well as clothes and towels.*

## **Outcome 2.2.**

### **Increased monitoring of the State's implementation of United Nations International Human Rights Treaties**

#### **Convention on Migrant Workers (CMW)**

The Commission followed up on the submission of the CMW report under the simplified procedure. The Department of Employment stated that the CMW Committee will adopt a **List of Issues Prior to Reporting** (LOIPR) for Seychelles during its 36th session, which will take place in Geneva from Monday, 27<sup>th</sup> March to Thursday, 6<sup>th</sup> April 2023.

The adopted LOIPR will be transmitted to the Permanent Mission of the Republic of Seychelles in Geneva, with a deadline of a maximum of 8 months for Seychelles to provide its reply. The LOIPR and the State's reply thereto will constitute the report of the State Party. It is only once Seychelles' reply to the LOIPR is received by the Secretariat that it will plan for a constructive dialogue between a delegation from Seychelles and the CMW Committee, which will adopt the Concluding Observations under the provisions of the CMW.

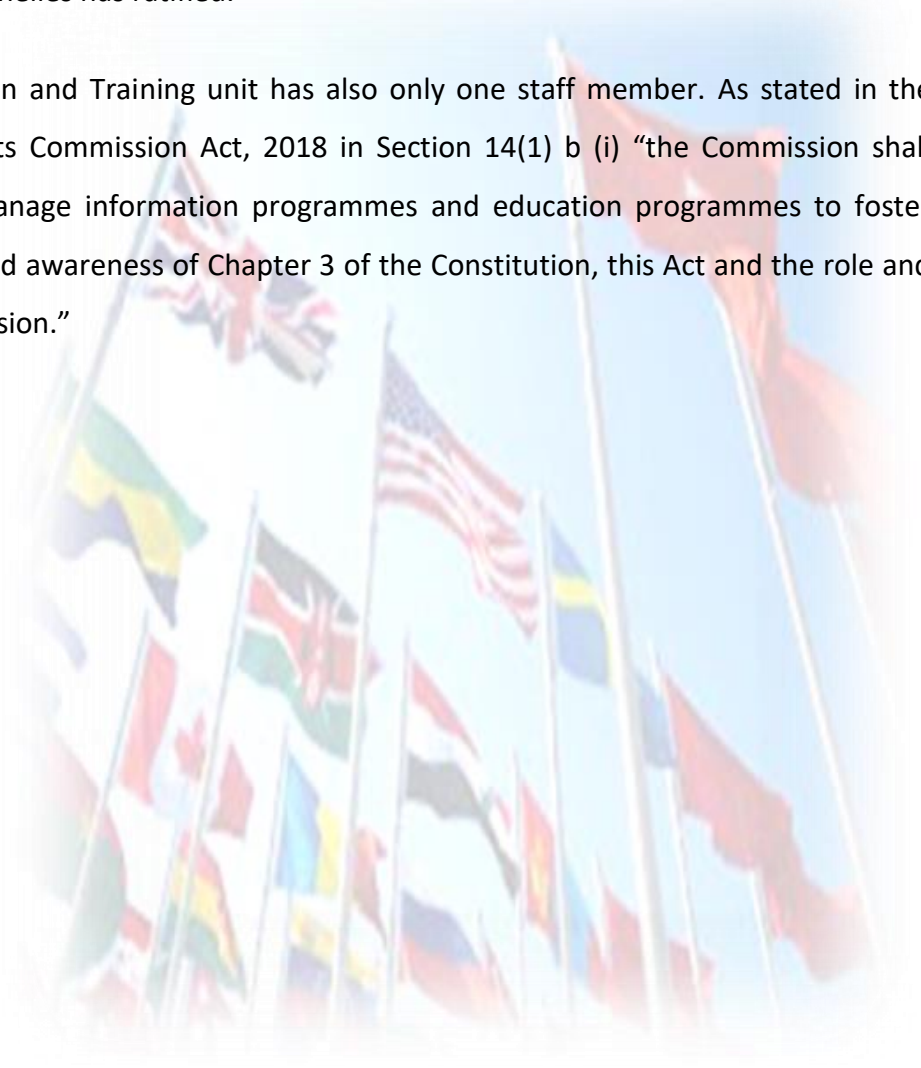
## **Convention on the Rights of Persons with Disabilities (CRPD)**

The Commission submitted its response to the concluding observations on the initial report of Seychelles, issued by the Committee on the Rights of Persons with Disabilities in 2018. The General Principles and Obligations of the CRPD is to Promote and defend a human rights model for disability and eliminate the use of all derogatory language in laws and when referring to persons with disabilities.

### **Further to the recommendations the Commission responded:**

The monitoring unit of the SHRC, due to budget constraints, only has one staff member. This unit has started monitoring the implementation of and compliance with the nine core UN Human Rights treaties that Seychelles has ratified.

Moreover, the Education and Training unit has also only one staff member. As stated in the Seychelles Human Rights Commission Act, 2018 in Section 14(1) b (i) “the Commission shall develop, conduct or manage information programmes and education programmes to foster public understanding and awareness of Chapter 3 of the Constitution, this Act and the role and activities of the Commission.”



## Priority 3: Investigations and Complaints Handling

Complaints handling and investigations are a core function of the Commission. Section 14 (4) (a) of the *Act* empowers the Commission to investigate alleged violations of human rights on its own initiative or on receipt of a complaint. Furthermore, the Commission may initiate proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons, including proceedings relating to the constitutionality of a law or the provisions of a law.

### Procedures

The Commission approved the Complaints Handling and Investigations Procedures in May 2022. These Procedures aim to guide persons as to how the Commission handles complaints, conducts investigations, and makes its opinions and recommendations. As such, they are critical for providing well-founded and reasoned opinions, as well as recommendations, in the most effective and efficient way possible.

### Complaints Handling & Investigations

Upon receiving a formal complaint, the Commission may carry out an initial assessment of the complaint to determine whether it contains a possible human rights violation and meets the complaints criteria. Furthermore, should the Commission

determine that there is an existing mechanism that can deal with the specific nature of a complaint, the Commission may refer the Complainant thereto in the first instance.

### Alternative Dispute Resolution (ADR)

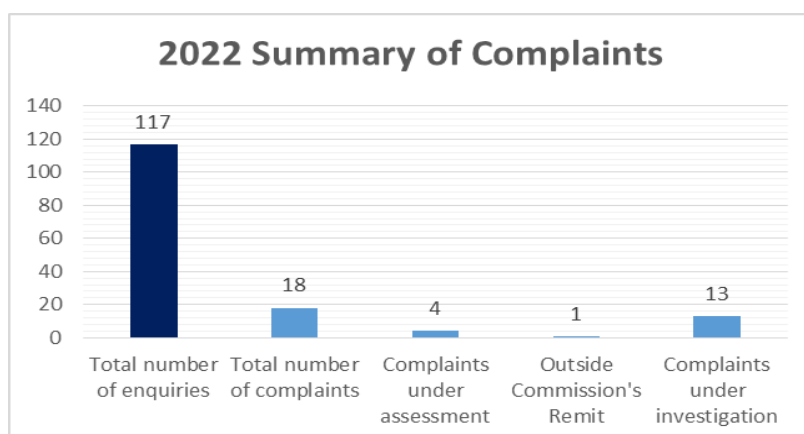
The Commission may, pursuant to section 15 of the *Act*, resolve complaints via negotiation, conciliation or mediation, where the Commission sees it justifiable, based on an Investigations and Analysis Report, for it to resolve the matter in such manner. As at 31<sup>st</sup> December 2022, the Commission has not yet conducted any ADR in view that the Commission didn't have the proper resources and that the Commission is in dire need of conducting awareness of the ADR process.

## Outcome 3.1. Reduction in alleged human rights violations received

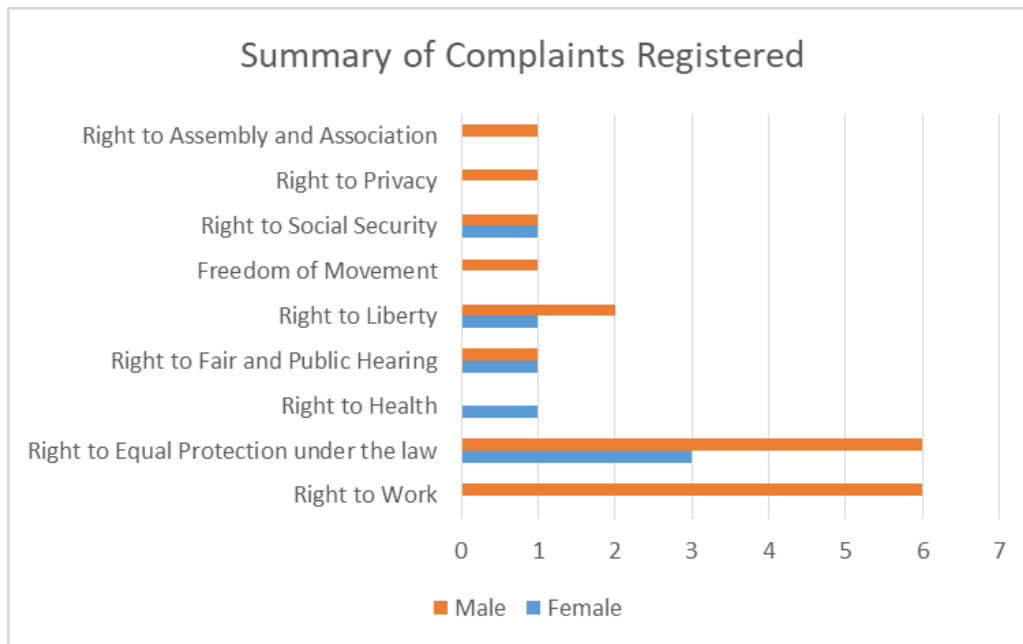
### Summary of Complaints 2022

A total of 117 enquiries were registered at the Commission in 2022. This included complaints in relation to alleged human rights violations and from persons seeking the Commission's assistance and advice. Upon assessment, certain complaints were found to be cross-cutting, which means that the violation of more than one human right may have been involved.

It is important to highlight that, in 2022, **the Commission recorded an increase of 50% in the total enquiries registered compared to the previous year (2021)**. A total of 18 enquiries contained a possible human right violation and were registered to be investigated.

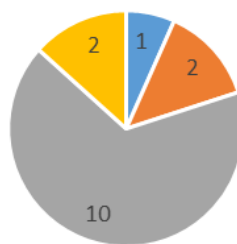


## Summary of Complaints Registered to be investigated\*\*2



## Other Statistics

### Summary of Respondents (Registered Complaints)



- Seychelles Medical / Dental Council
- Agency for Social Protection
- Seychelles Police Force
- Department of Immigration

<sup>2</sup> The graphs and charts will show a discrepancy in the figures, in view that certain complaints were cross-cutting and contained more than one alleged human rights violation.

## Priority 4: Review of Legislations & Policies

Pursuant to section 14 (1) (a) (i) of the *Act*, the Commission is mandated to make recommendations to ministries at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the *Constitution*. Furthermore, under section 14 (1) (b) (v), the Commission is mandated to review government policies relating to human rights and may make recommendations.

### Outcome 4.1. Improved human rights results in government and the institutionalisation of the human rights approach

#### Opinion on Bills Reports

The Commission reported on proposed legislation that, in the Commission's opinion, may not be entirely consistent with Chapter III of the *Constitution* or norms of international human rights law. The Commission drafted and issued two Opinion on Bills Reports, namely the:

- ***Financial Consumer Protection Bill, 2022 (Bill No.1 of 2022)***

The Commission is of the opinion that the Bill before it, in the current draft, *prima facie*, may lack the due process necessary to render the limitations on the right to privacy and the right to shelter implicated in this Bill permissible. Furthermore, the Commission is concerned that the current draft of the Bill may not adequately respect and fulfil the right to a fair hearing under Article 19 of the *Constitution*, namely clause (7) of the same, as it may not, *prima facie*, grant the services provider an opportunity to be independently and impartially heard in a manner that is conducive to the requirements of domestic and international human rights law, which call for, among other things, the separation of investigative and hearing powers.



- ***Constitution of the Republic of Seychelles (Tenth Amendment) Bill, 2022 (Bill No. 06 of 2022)***

The questions analysed in this report include whether article 163 of the *Constitution* currently permits the Defence Forces of Seychelles to execute law enforcement powers within the maritime zones of Seychelles and the potential consequences that the proposed amendment may have on human rights, the rule of law and due process.

### **Final Position after Response Reports**

The Commission, after receiving a response from a Responsible Government Body vis-à-vis a previously issued report, drafts a Final Position after Response Report, outlining whether the Commission maintains their original position in the context of the aforementioned response. The Commission drafted and issued one Final Position after Response Report in 2022, namely the:

- ***Final Position After Response on the Restrictions on Entry to Seychelles for Seychellois Citizens***

The Commission, having reviewed the response of the Ministry of Internal Affairs to the Commission's Review of Legislation and Government Policies Analysis Report (dated 3<sup>rd</sup> December 2021), which can be found on the Commission's website, maintained its original opinion and recommendations with regard to the entry restrictions imposed on Seychellois citizens. The Commission maintained its original opinion and recommendations on the basis that the Ministry's response did not appear to provide any information based on fact or legal merit that may have altered the Commission's original conclusions.

## Priority 5: Institutional Strengthening

Pursuant to section 14 (1) (b) (ii) of the *Act*, the Commission is mandated to maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances.

Furthermore, section 14 (1) (b) (iii) of the *Act* empowers the Commission to liaise and interact with any organisation which actively promotes respect for human rights and other sectors of civil society to further the objects of the Commission.

### **Outcome 4.1. Improved human rights awareness and cooperation between the Commission and other organisation.**

#### **Capacity-Building**

Capacity-building at the Commission is often done through training and institutional strengthening is focused on the Commission's systems and structures needed to function effectively to deliver its mandate. Capacity-building in the human rights field is crucial to ensure that staff of the Commission have the necessary knowledge and skills to perform their duties effectively. Moreover, it is of utmost importance that staff of the Commission is familiar with international human rights standards and values.

During the year 2022, staff and Commissioners of the Commission benefited from capacity-building activities and engaged with various institutions both locally and internationally, as depicted in the *Table 1*.

<b>DATE</b>	<b>ACTIVITY</b>	<b>DETAILS</b>	<b>ATTENDED BY</b>
<i>17 June 2022</i>	<i>UNAFRI fact-finding mission in Seychelles</i>	<i>UNAFRI fact-finding mission in Seychelles on the implementation of SDG -16 and to explore possibilities of conducting training in the near future for senior to middle-level managers in the criminal justice sector.</i>	<i>CEO</i>
<i>17 June 2022 University of Seychelles</i>	<i>Workshop for Practice Teachers</i>	<i>Facilitating learning during field placement for University student following degree in social work.</i>	<i>Ms Sheila Vidot  (Senior Administration Officer)</i>
<i>10th of August STC Conference room</i>	<i>Validation workshop</i>	<i>The 7<sup>th</sup> progress report on the Implementation of the Convention of the Rights of the Child</i>	<i>Mrs Nicole Larsen  (Senior Monitoring Officer)</i>
<i>22nd August 2022 STC Conference</i>	<i>Half day workshop</i>	<i>The purpose of the workshop is to allow stakeholders from different industries to meet and propose a mechanism which businesses can put in place to address the issue of abuse in the workplace.</i>	<i>Mrs Gina Come  (Communications Officer)</i>
<i>22<sup>nd</sup> August – 23<sup>rd</sup> August 2022</i>	<i>Training workshop</i>	<i>Bodily Autonomy and Integrity Training Workshop - ARASA Premier Hotel in Johannesburg, South Africa.</i>	<i>CEO  Ms. Sophie Lagrenade (Senior Education Officer)</i>
<i>5<sup>th</sup> September 2022</i>	<i>Gender Workshop to Validate new EU gender action plan for 2021–2025 (GAP III)</i>	<i>Meetings on Gender Gap Analysis and Gender Country Profile, the Research and Policy Planning Division within the Family Department in collaboration with the Ministry of Foreign Affairs and Tourism and the European Union</i>	<i>Mrs Nicole Larsen  (Senior Monitoring Officer)</i>

## Corporate Services

The primary role of the Corporate Services is to provide effective and efficient administrative support to all units of the Commission. This includes budget submissions and financial management, development of strategic priorities, training and development needs analysis, communications, and office and logistics management. The Corporate Section falls under the responsibility of the Chief Executive Officer, Mr. Elvis Julie.

### Recruitment

The Commission employed 13 Staff as at 31<sup>st</sup> December 2022.

The below table shows the recruitment for the year 2022.

<i>February</i>	<i>Senior Education &amp; Training Officer</i>
	<i>Communications Officer</i>
	<i>Driver /Messenger</i>
<i>May</i>	<i>Senior Finance Officer</i>

The recruitment and selection process of potential candidates is based on a

transparent process and criteria. Candidates are assessed on their knowledge, experience, skills and abilities.

### Financial Management

Section 24 of the *Act* empowers the Commission to employ such employees as may be reasonably necessary to assist the Commission in the performance of its functions. The employees shall be employed on such terms and conditions and receive such remuneration, allowances and other benefits as the Commission may, subject to the approval of the Minister, determine.

Section 20 of the *Act* stipulates that the funds of the Commission shall consist of –

- (a) Such monies as may be appropriated by the National assembly pursuant to an Appropriation Act for the purposes of the Commission;
- (b) Any monies received by the Commission by way of donations, gifts or grants from any legal sources whether domestic or foreign; and
- (c) Any proceeds of sale, lease or transfer of movable or immovable property of the Commission.

## FINANCIAL EXPENDITURE

### Consolidated Expenditure Outturn

R'000s	2020		2021		Variance
	Audited Outturn	Budget	Revised Budget	Preliminary Outturn	Revised Budget to Outturn
<b>Programmes</b>					
<i>P1:Protection of Human Rights</i>	7,289	8,026	8,026	6,328	21.2%
<b>Total</b>	<b>7,289</b>	<b>8,026</b>	<b>8,026</b>	<b>6,328</b>	<b>21.2%</b>
<b>Economic Classification</b>					
<b>CURRENT EXPENDITURE</b>	<b>7,289</b>	<b>8,026</b>	<b>8,026</b>	<b>6,328</b>	<b>21.2%</b>
<b>Compensation of Employees</b>	<b>3,024</b>	<b>3,494</b>	<b>3,494</b>	<b>3,331</b>	<b>4.7%</b>
<i>Wages and Salaries in Cash</i>	3,024	3,494	3,494	3,331	4.7%
<i>Wages and Salaries in Kind</i>	-	-	-	-	0.0%
<b>Use of Goods and Services</b>	<b>4,266</b>	<b>4,532</b>	<b>4,532</b>	<b>2,996</b>	<b>33.9%</b>
<i>Office Expenses</i>	818	786	786	692	12.0%
<i>Transportation and Travel cost</i>	246	240	240	29	87.9%
<i>Maintenance and Repairs</i>	79	79	79	30	61.5%
<i>Materials and Supplies</i>	-	-	-	-	0.0%
<i>Other Uses of Goods and Services</i>	3,013	3,352	3,352	2,174	35.1%
<i>Minor Capital Outlays</i>	110	75	75	71	5.1%
<b>CAPITAL EXPENDITURE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0.0%</b>
<i>Non-financial Assets</i>	-	-	-	-	0.0%
<i>Building and Infrastructure</i>	-	-	-	-	0.0%
<i>Machinery and Equipment</i>	-	-	-	-	0.0%
<i>Other Fixed Assets</i>	-	-	-	-	0.0%
<i>Non-produced Assets</i>	-	-	-	-	0.0%
<b>Total</b>	<b>7,289</b>	<b>8,026</b>	<b>8,026</b>	<b>6,328</b>	<b>21.2%</b>

## Consolidated Programme Expenditure Performance

R'000s	2020		2021		Variance
	Audited Outturn	Budget	Revised Budget	Preliminary Outturn	Revised Budget to Outturn
%					
<b>Programmes</b>					
<i>P1:Protection of Human Rights</i>	7,289	8,026	8,026	6,328	21.2%
<b>Total</b>	<b>7,289</b>	<b>8,026</b>	<b>8,026</b>	<b>6,328</b>	<b>21.2%</b>
<b>Economic Classification</b>					
<b>CURRENT EXPENDITURE</b>	<b>7,289</b>	<b>8,026</b>	<b>8,026</b>	<b>6,328</b>	<b>21.2%</b>
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<b>Use of Goods and Services</b>	<b>4,266</b>	<b>4,532</b>	<b>4,532</b>	<b>2,996</b>	<b>33.9%</b>
<i>Office Expenses</i>	818	786	786	692	12.0%
<i>Transportation and Travel cost</i>	246	240	240	29	87.9%
<i>Maintenance and Repairs</i>	79	79	79	30	61.5%
<i>Materials and Supplies</i>	-	-	-	-	0.0%
<i>Other Uses of Goods and Services</i>	3,013	3,352	3,352	2,174	35.1%
<i>Minor Capital Outlays</i>	110	75	75	71	5.1%
<b>CAPITAL EXPENDITURE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0.0%</b>
<i>Non-financial Assets</i>	-	-	-	-	0.0%
<i>Building and Infrastructure</i>	-	-	-	-	0.0%
<i>Machinery and Equipment</i>	-	-	-	-	0.0%
<i>Other Fixed Assets</i>	-	-	-	-	0.0%
<i>Non-produced Assets</i>	-	-	-	-	0.0%
<b>Total</b>	<b>7,289</b>	<b>8,026</b>	<b>8,026</b>	<b>6,328</b>	<b>21.2%</b>

## Summary of Challenges and Way Forward

STRATEGIC PRIORITIES	CHALLENGES	IT IS RECOMMENDED THAT:	
<b>Priority 1 – Human Rights Promotions and Communications</b>	<i>Internal</i>	<p><b><i>Inadequate Human Resources</i></b>  <i>The Commission is equipped with a Senior Education &amp; Training Officer and a Communications Officer. Both employee have their set of duties, however, their duties partly interlinks in the creation of promotional materials which are currently being developed and designed in-house. The designing itself is very time consuming considering that the officers have other priorities to attend to.</i></p>	<ul style="list-style-type: none"> <li>• <i>The Commission considers the recruitment of an additional staff to assist the Senior Education and Training Officer to deliver trainings, research and production of materials.</i></li> </ul> <p style="text-align: center;"><i>And/or</i></p> <ul style="list-style-type: none"> <li>• <i>Allocate additional funds to outsource the designing of promotional materials.</i></li> </ul>
		<p><b><i>Inadequate Funds for media productions</i></b>  <i>There has been a lack of funding in order to produce media programmes focussing on various human rights topic.</i></p>	<ul style="list-style-type: none"> <li>• <i>With the introduction of Zero Based budgeting the Commission has budgeted for the production of media programmes for 2022.</i></li> </ul>
	<i>External</i>	<p><b><i>Attendance of Participants at Human Rights Training Sessions/Outreach Activities</i></b>  <i>The Commission has observed poor turnout at outreach events and educational sessions. Moreover, to the point of agreeing on specific dates to conduct sessions with a particular group.</i></p>	<ul style="list-style-type: none"> <li>• <i>The Communication Unit conducts adequate promotion of events, especially activities reaching out to members of the public.</i></li> </ul>

<p><b>Priority 2 – Monitoring National and International Human Rights Standards</b></p>	<p><i>Internal</i></p>	<p><b><i>Inadequate Human Resources</i></b>  <i>There is currently one Senior Monitoring Officer responsible for undertaking all monitoring duties. There is a need to constantly perform follow ups with parent ministries vis-à-vis the implementation of the various international and regional Conventions, covenants and treaties.</i></p>	<ul style="list-style-type: none"> <li>• <i>The Commission considers the recruitment of an additional staff to assist the Senior Monitoring Officer to conduct monitoring of international standards as well as conducting education trainings on the 9 core human rights treaties.</i></li> </ul>
	<p><i>External</i></p>	<p><b><i>Delay to provide response from duty bearers</i></b>  <i>There has been a lack of understanding of the systemic role of the Commission within the governance structure of the State and the lack of effective participation further to the submission of the Commission’s Monitoring Reports and IARs.</i></p>	<ul style="list-style-type: none"> <li>• <i>The Commission re-considers our approach to try and mitigate the lack of response by public authorities.</i></li> <li>• <i>Public authorities must institutionalise domestic and international human rights obligations within their structures.</i></li> <li>• <i>Public authorities consider making a special effort to understand the systemic role of the Commission within the governance structure by undertaking the rule of law, human rights and administrative law training provided by the Commission</i></li> </ul>



<p><b>Priority 3 – Investigations and Complaints Handling</b></p>	<p><i>Internal</i></p>	<p><b><i>Inadequate Human Resources</i></b>  <i>The lack of human resources in the Complaints and Investigations Unit has had a substantial impact on the Commission being able to effectively meet its investigation mandate.</i></p>	<ul style="list-style-type: none"> <li>• <i>The Commission strongly considers recruiting additional staff with legal or human rights backgrounds.</i></li> </ul>
	<p><i>External</i></p>	<p><b><i>The lack of full corporation by public authorities</i></b>, to whom the majority of the complaints before the Commission pertained. This inhibits the complaints and investigation unit in their ability to investigate complaints in a timely and effective manner.</p>	<ul style="list-style-type: none"> <li>• <i>Public Authorities must fully cooperate with the Commission to ensure that the Commission is able to complete its investigations and find potential resolutions for complaints before it, in a professional, transparent, effective and accountable manner.</i></li> </ul>
<p><b>Priority 4 – Review of Laws and Policies</b></p>	<p><i>External</i></p>	<p><b><i>The lack of response and engagement from Government.</i></b></p>	<ul style="list-style-type: none"> <li>• <i>Public authorities consider making a special effort to understand the systemic role of the Commission within the governance structure by undertaking the rule of law, human rights and administrative law training provided by the Commission.</i></li> </ul>

## **Human Dignity – Bedrock Humanity**

**SEYCHELLES HUMAN RIGHTS COMMISSION ACT, 2018***(Act 7 of 2018)***ARRANGEMENT OF SECTIONS****PART I - PRELIMINARY****Sections**

1. Short title and commencement
2. Interpretation

**PART II - SEYCHELLES HUMAN RIGHTS COMMISSION.**

3. Establishment of the Commission
4. Powers and functions of Chairperson, Deputy Chairperson and Commissioners
5. Appointment of Chairperson, Deputy Chairperson and Commissioners
6. Eligibility of Chairperson, Deputy Chairperson and Commissioners of Commission
7. Resignation and vacancy in the office of Chairperson, Deputy Chairperson or Commissioner
8. Termination of Appointment
9. Independence and impartiality
10. Remuneration and allowances of Commissioners
11. Meetings of Commission
12. Committees of Commission
13. Conferment of powers and assignment of functions
14. Powers and functions of Commission
15. Mediation, conciliation or negotiation by Commission
16. Investigations by Commission
17. Entering and search of premises and attachment and removal of articles
18. Compensation for expenses
19. Reports by Commission

**PART III - FINANCE, ACCOUNTS AND REPORTS**

20. Funds of Commission
21. Accounts and Audit
22. Annual Report

**PART IV - OFFENCES AND PENALTIES****23. Offences and penalties****PART V - ADMINISTRATION AND MISCELLANEOUS PROVISIONS****24. Staff of Commission****25. Application of provisions of Penal Code****26. Protection of action taken in good faith****27. Regulations****28. Repeal and savings****29. Transitional provisions**



**SEYCHELLES HUMAN RIGHTS COMMISSION  
ACT, 2018**

*(Act 7 of 2018)*

*I assent*

Danny Faure  
President



*9th August, 2018*

**AN ACT to establish the Seychelles Human Rights Commission, to provide for its composition, powers, functions and to create a means by which it can engage in mediation, conciliation and negotiation; to enable it to investigate, detect and make recommendations to the government and to provide for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

**PART I - PRELIMINARY**

1. This Act may be cited as the Seychelles Human Rights Commission Act, 2018 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title and commencement

## Interpretation

2. In this Act, unless the context otherwise requires —

“Chairperson” means the Chairperson of the Commission appointed under section 5(1);

“Commission” means the Seychelles Human Rights Commission established under sections 3(1);

“Commissioner” means a Commissioner appointed under section 5(1) and includes Chairperson and Deputy Chairperson;

“committee” means a committee established under section 13(1);

“Constitution” means the Constitution of the Republic of Seychelles;

“Deputy Chairperson” means the Deputy Chairperson of the Commission appointed under section 5(1);

“human rights” means the human rights and freedoms contained in Chapter III of the Constitution;

“investigation” means an investigation contemplated in section 17;

“member of staff” means the Chief Executive Officer and any person appointed under section 25;

“Minister” means the Minister responsible for Legal Affairs;

“premises” includes land, any building or structure,

or any vehicle, conveyance, ship, boat, vessel, aircraft or container;

“private dwelling” means any part of any building or structure which is occupied as a residence or any part of any building or structure or outdoor living area which is accessory to, and used wholly or principally for, the purposes of residence;

“public authority” means —

- (a) a Ministry or Government department;
- (b) a division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of Government or any other body which is carrying out a governmental function or services; or
- (c) a person or body specified as a public authority by any written law;

“warrant” means a search warrant or an entry and search warrant, as the case may be, issued under section 18(5).

## **PART II - THE SEYCHELLES HUMAN RIGHTS COMMISSION**

3.(1) There is hereby established a Commission to be known as the Seychelles Human Rights Commission which shall be a body corporate having perpetual succession and a common seal and capable of suing and being sued in its own name.

(2) The Commission shall be a self-governing, neutral and independent body and shall not be subject to the direction or control of any person or authority.

Establishment of  
the Commission

Powers and functions of Chairperson, Deputy Chairperson and other Commissioners

4.(1) The Chairperson is vested with all the powers and functions conferred on or assigned to him or her by this Act or any other written law.

(2) The Deputy Chairperson and any other Commissioner are vested with all the powers and functions conferred on or assigned to him or her by the Commission or delegated to him or her by the Chairperson.

(3) The Chairperson shall be, in exercising the powers and performing the functions conferred on or assigned to him or her by this Act or any other law, accountable to the Commission.

(4) The Deputy Chairperson and any other Commissioner shall be, in exercising the powers and performing the functions

(a) conferred on or assigned to him or her by the Commission, accountable to the Commission; or

(b) delegated to him or her by the Chairperson, accountable to the Chairperson.

Appointment of Chairperson, Deputy Chairperson and Commissioners

5.(1) The President shall in consultation with the Speaker of the National Assembly appoint a Chairperson, a Deputy Chairperson and three Commissioners selected from a panel of 3 candidates for each post proposed by the Constitutional Appointments Authority and such appointments shall be published in the Gazette.

(2) The Constitutional Appointments Authority shall, before making recommendation under subsection (1), advertise the posts of Chairperson, Deputy Chairperson and Commissioners specifying the qualification for such posts.

(3) A person is qualified for appointment as



Chairperson, Deputy Chairperson or Commissioner if the Constitutional Appointments Authority is of the opinion that the person possesses demonstrated competence and experience and can effectively discharge the functions of the office of Chairperson, Deputy Chairperson or Commissioner.

(4) The Chairperson, Deputy Chairperson and the Commissioners shall hold office for a term of 5 years, and shall be eligible for reappointment.

(5) Whenever the Chairperson is absent or for any reason unable to, exercise the powers and perform the functions vested in the office of the Chairperson, or whenever the office of Chairperson is vacant, the Deputy Chairperson shall exercise all the powers and shall perform all the functions of the Chairperson.

(6) Whenever both the Chairperson and the Deputy Chairperson are absent or for any reason unable to exercise the powers and perform the functions vested in the office of Chairperson, or whenever both offices are vacant, the remaining Commissioners shall from among themselves elect an acting Chairperson.

(7) Any Commissioner acting as Chairperson of the Commission by virtue of the provisions of subsection (8) may, while so acting, exercise all the powers and shall, while so acting, perform all the functions of the Chairperson.

(8) Where a vacancy occurs in the office of the Chairperson by reason of death, resignation, or for any other reason stipulated in section 7, the President may authorise the Deputy Chairperson or in his or her absence or vacancy in the office of the Deputy Chairperson, a Commissioner to act as Chairperson until the vacancy is filled in accordance with this Act.

(9) Where a vacancy occurs in the office of the Deputy Chairperson by reason of death, resignation or for any other

reason stipulated in section 7, the President may authorise a Commissioner to act as the Deputy Chairperson.

(10) A person authorised under subsection (10) or (11) may hold the office for the unexpired term of the vacancy to which that person is authorised or till a person is appointed to the vacancy, whichever earlier, as the case may be.

(11) Subsection (12) shall mutatis mutandis apply to a vacancy caused in the office of a Commissioner also.

(12) The Chairperson, Deputy Chairperson and the Commissioners shall not enter upon the duties of their offices unless they have taken and subscribed before the President the Oath of Allegiance and the Judicial Oath.

Eligibility of  
Chairperson,  
Deputy  
Chairperson  
and  
Commissioners  
of Commission

6.(1) A person having the qualifications specified under section 5 is eligible to be appointed as the Chairperson, Deputy Chairperson or a Commissioner, as the case may be, if that person—

- (a) is a citizen of, and resides permanently in, the Republic;
- (b) is of proven integrity; and
- (c) is not an undischarged insolvent or bankrupt.

(2) A person shall not be appointed as the Chairperson, Deputy Chairperson or a Commissioner if that person—

- (a) holds office in, or is an employee of, a political party;
- (b) has ceased, to hold office in, or to be an employee of, a political party for a period of less than one year;
- (c) is a member of the National Assembly or District Council;

- (d) has been convicted and served a sentence of imprisonment for a term of six months or more for an offence involving fraud, dishonesty or moral turpitude, or any other offence under any other written law; or
- (e) has been adjudged as a violator of human rights by a competent Court or Authority.

7. (1) The Chairperson may resign upon giving at least 3 months' written notice, to the President.

(2) The office of the Chairperson shall become vacant—

- (a) on the expiration of the term of office of Chairperson;
- (b) if the Chairperson is absent from three consecutive meetings of the Commission, without reasonable excuse;
- (c) if the Chairperson is adjudged bankrupt;
- (d) if the Chairperson is convicted of an offence under any written law and sentenced therefor to imprisonment for a term of six months or more, without the option of fine;
- (e) if the Chairperson is declared to be of unsound mind or body;
- (f) upon Chairperson's death; or
- (g) as and when the Chairperson is removed from office in accordance with section 8.

(3) Subsection (1) and (2) shall mutatis mutandis apply to the Deputy Chairperson and Commissioners.

(4) A vacancy in the Commission shall not affect the validity of the proceedings or decision of the Commission.

Resignation  
and vacancy  
in the office  
of Chairperson,  
Deputy  
Chairperson or  
Commissioner

(5) The Commission shall, as soon as a vacancy occurs, inform the Constitutional Appointments Authority and the President, in writing, of such vacancy.

(6) A vacancy in the Commission shall, as soon as practicable after the Constitutional Appointments Authority and the President become aware thereof, be filled in accordance with the provisions of this Act.

Termination  
of  
Appointment

8.(1) Subject to the provisions of subsections (2), (3) and (4), the President may remove from office the Chairperson, Deputy Chairperson or a Commissioner on grounds of gross misbehavior or misconduct.

(2) Where a complaint, allegation or report of misbehaviour or misconduct against the Chairperson, Deputy Chairperson or a Commissioner is received and the President is prima facie satisfied that it shall be enquired into, the President shall refer the matter to the Chief Justice of Supreme Court for enquiry and report.

(3) Where a question of removing the Chairperson, Deputy Chairperson or a Commissioner is referred to the Chief Justice, the President may suspend the Chairperson, Deputy Chairperson or the Commissioner, as the case may be, from performing the functions of the Commission but the suspension shall cease to have effect if the Chief Justice recommends to the President that the Chairperson, Deputy Chairperson or the Commissioner, as the case may be, ought not be removed from office.

(4) The Chief Justice shall on a reference made under subsection (2) hold an enquiry and recommend to the President whether the Chairperson, Deputy Chairperson or the Commissioner ought to be removed on such ground or grounds and the President shall act accordingly.

Independence  
and impartiality

9.(1) A Commissioner or a member of staff —

(a) shall serve impartially and independently and

exercise or perform his or her powers and functions in good faith and without fear, favour, bias or prejudice and subject to the Constitution, this Act or any other written law;

- (b) may not use the position or privileges of a Commissioner or a member of staff for private gain or to benefit another person improperly; and
- (c) may not act in any manner that compromises the credibility, impartiality, independence or integrity of the Commission.

(2) Every public authority, organisation or institution shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission in pursuit of its objects.

(3) A public authority, organisation or institution shall not interfere with, hinder or obstruct the Commission, any Commissioner, a member of staff or a person appointed under section 13(1) or authorised under section 18(1) in the exercise or performance of its or his or her powers and functions.

(4) A Commissioner or member of staff shall not conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her powers and functions in a fair, unbiased and proper manner.

(5) If any Commissioner or member of staff fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation, while having an interest so contemplated in the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

(6) In the interest of transparency and accountability, a Commissioner shall, in the manner determined by the Commission, annually disclose his or her financial interests and any other interests determined by the Commission, which information shall be accessible to the public.

(7) A Commissioner or a member of staff who contravenes or fails to comply with subsections (1)(b) or (4) is guilty of misconduct.

Remuneration  
and allowances  
of  
Commissioners

**10.(1)** The salary and allowances of the Chairperson, Deputy Chairperson and the Commissioners shall be such as may be prescribed.

(2) The remuneration of the Commissioners shall not be reduced, nor the allowances and other conditions of office and service benefits be adversely altered, during their continuation in office.

Meetings of  
Commission

**11.(1)** The meetings of the Commission shall be held at the time and place determined by the Commission.

(2) If the Chairperson is absent from a meeting of the Commission, the Deputy Chairperson acts as Chairperson, and if both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the Commissioners present shall elect one among themselves to preside at that meeting.

(3) The quorum for any meeting of the Commission is a majority of the total number of Commissioners.

(4) The decision of the Commission shall be based on the majority of the Commissioners present at a meeting and in the event of an equality of votes concerning any matter, the Commissioner presiding shall have a casting vote.

(5) The Commission shall —  
(a) determine its own procedure but due regard shall be given to the principles of

transparency, openness and public participation; and

(b) cause the minutes of its proceedings to be kept.

(6) The Commission may, from time to time, by notice in the Gazette, make known the particulars of the procedure which it has determined in terms of subsection (5)(a).

12.(1) The Commission may form one or more committees consisting of one or more Commissioners designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by it for the purposes of advising the Commission, or making recommendations to it, in respect of the matter for which the committee has been formed.

Committees  
of  
Commission

(2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.

(3) The Commission shall designate a Chairperson, who shall be a Commissioner, for every committee and, if it deems it necessary, a Deputy Chairperson, who shall also be a Commissioner.

(4) Subject to the directions of the Commission, a committee—

(a) may exercise such powers of the Commission as the Commission may confer on it; and

(b) shall perform such functions of the Commission as the Commission may assign to it,

and shall follow such procedure during such exercise of powers and performance of functions as the Commission may direct.

(5) On completion of the functions assigned to it in terms of subsection (4), a committee shall submit a written report thereon, including recommendations, if any, for consideration by the Commission.

(6) The Commission may, at any time, dissolve any committee.

Conferment of powers and assignment of functions

13.(1) The Commission may, in writing, confer the exercise of any of its powers or assign the performance of any of its functions to—

- (a) a Commissioner;
- (b) a member of staff; or
- (c) a committee of the Commission.

(2) A conferment or assignment under subsection (1)—

- (a) is subject to such conditions and directions as the Commission may impose; and
- (b) does not divest the Commission of responsibility for the exercise of the power or the performance of the function.

(3) The Commission may confirm, vary or revoke any decision taken in consequence of a conferment or assignment under this section, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Powers and functions of Commission

14.(1) In addition to any other powers and functions conferred on or assigned to it by this Act or any other written law and in order to achieve its objects—

- (a) the Commission is competent and is obliged to—



- (i) make recommendations to the ministries at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and this Act, as well as appropriate measures for the further observance of such rights;
  - (ii) undertake such studies for reporting on or relating to human rights as it considers advisable in the performance of its functions or to further the objects of the Commission; and
  - (iii) request any head of the organisation or institution or the principal secretary of any ministry or department to supply it with information on any legislative or executive measures adopted by it relating to human rights; and
- (b) the Commission —
- (i) shall develop, conduct or manage information programmes and education programmes to foster public understanding and awareness of Chapter III of the Constitution, this Act and the role and activities of the Commission;
  - (ii) shall as far as is practicable maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission in order to foster common policies and practices and to promote co-operation in relation to the

- handling of complaints in cases of overlapping jurisdiction or other appropriate instances;
- (iii) shall liaise and interact with any organisation which actively promotes respect for human rights and other sectors of civil society to further the objects of the Commission;
- (iv) shall consider such recommendations, suggestions and requests concerning the promotion of respect for human rights as it may receive from any source;
- (v) shall review government policies relating to human rights and may make recommendations;
- (vi) shall monitor the implementation of, and compliance with, international and regional conventions and treaties, international and regional covenants and international and regional charters relating to the objects of the Commission;
- (vii) shall prepare and submit reports to the National Assembly pertaining to any such convention, treaty, covenant or charter relating to the objects of the Commission; and
- (viii) shall carry out or cause to be carried out such studies concerning human rights as may be referred to it by the President, and the Commission shall include in a report referred to in section 20(1) a report

setting out the results of each study together with such recommendations in relation thereto as it considers appropriate.

(2) The Commission may recommend to the President for adoption of new legislation which will promote respect for human rights and a culture of human rights.

(3) If the Commission is of the opinion that any proposed legislation or any written law is contrary to Chapter III of the Constitution or to norms of international human rights law which forms part of the laws of the Republic or to other relevant norms of international law, it shall immediately report that fact to the President.

(4) The Commission is competent —

(a) to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be initiated in a competent court for necessary relief or may direct a complainant to an appropriate forum; and

(b) to initiate proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons, including proceedings relating to the constitutionality of a law or the provisions of a law.

(5) The Commission shall not investigate or may discontinue the investigation of a complaint where it appears to the Commission that the making of the complaint has, without reasonable cause, been delayed for more than five years; and

(6) Every head of the organisation or institution or principal secretary of any ministry or department shall afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its functions.

**15.** The Commission may, by mediation, conciliation or negotiation endeavour —

(a) to resolve any dispute; or

(b) to rectify any act or omission,

emanating from or constituting a violation of or threat to any human right.

**16.(1)** The Commission may, in order to enable it to exercise its powers and perform its functions —

(a) conduct or cause to be conducted any investigation that is necessary for that purpose;

(b) through a Commissioner, or any member of staff duly authorised by a Commissioner, require from any person such particulars and information as may be reasonably necessary in connection with any investigation;

(c) require any person by notice in writing under the hand of a Commissioner, addressed and delivered by a member of staff or a police officer in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles

Mediation,  
conciliation or  
negotiation by  
Commission

Investigations  
by  
Commission

or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation:

Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced; and

- (d) through a Commissioner, administer an oath to or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in that paragraph, irrespective of whether or not such person has been required under the said paragraph to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.

(2) Any person questioned under subsection (1) shall, subject to the provisions of subsections (3), (4) and (5) —

- (i) be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the Commission notwithstanding that the answer may incriminate him or her; and

- (ii) be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.

(3) A person referred to in subsection (2) is only competent and compelled to answer a question or compelled to

produce any article or document contemplated in that subsection if —

- (a) the Commission is satisfied that to require such information from such person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
- (b) in the Commission's judgement, such person has refused or is likely to refuse to answer a question or to produce any article or document on the basis of his or her privilege against self-incrimination.

(4) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning under terms of subsection (1) is not admissible as evidence against the person concerned in criminal proceedings in a court of law or before anybody or institution established by or under any written law, except in criminal proceedings where the person is charged with the offence of perjury or with an offence under section 24(b) of this Act.

(5) Subject to the provisions of subsection (2)(i), the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law applies in relation to the questioning of a person under subsection (1).

(6) Any person appearing before the Commission by virtue of the provisions of subsection (1)(c) and (d) may be assisted at such examination by a legal representative and is entitled to peruse such of the documents referred to in subsection (1)(c) or any other relevant documents.

(7) If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by

way of the giving of evidence or the making of submissions and such person or his or her legal representative is entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission under this section.

(8) Subject to the provisions of this Act, the procedure to be followed in conducting an investigation shall be determined by the Commission with due regard to the circumstances of each case.

(9) The Commission shall make known publicly the particulars of the procedure which it has determined under subsection (8).

(10) If it is in the interests of justice or if harm to any person might otherwise ensue, the Commission or a Commissioner may direct that any person or category of persons or all persons the presence of whom is not desirable may not be present at the proceedings during the investigation or any part thereof.

(11) Notwithstanding anything to the contrary contained in any written law, no person may disclose to any other person the contents of any document in the possession of a Commissioner or a member of staff or the record of evidence given before the Commission during an investigation, unless the Commission determines otherwise.

(12) If the Chairperson, Deputy Chairperson or a Commissioner has any interest in any matter that the Commission is investigating, the Chairperson, Deputy Chairperson or the Commissioner, as the case may be, shall declare such interest as soon as practicable and shall, unless the Commission otherwise directs, recuse himself or herself from the investigation.

17.(1) Any Commissioner, or any member of staff or a police officer authorised thereto by the Commission, may, subject to the provisions of this section, for the purposes of

Entering and search of premises and attachment and removal of articles

exercising the powers and performing the functions mentioned in section 14 or conducting an investigation, search any person or enter and search any premises on or in<sup>7</sup> which anything connected with an investigation is or is suspected to be present.

(2) The entry and search of any person or premises under this section shall be conducted with strict regard to decency and order, including the protection of a person's right to—

- (a) respect for and protection of his or her dignity;
- (b) freedom and security; and
- (c) his or her personal privacy.

(3) A Commissioner or member of staff or police officer contemplated in subsection (1) may, subject to the provisions of this section—

- (a) inspect and search the person or premises referred to in that subsection, and make such enquiries as he or she may deem necessary;
- (b) examine any article or document found on the person or on or in the premises;
- (c) request information regarding such article or document from the owner or person in control of the premises or from any person in whose possession or control that article or document is, or who may reasonably be expected to have the necessary information;
- (d) make copies of or take extracts from any book or document found on the person or on or in the premises;
- (e) request from any person whom he or she suspects of having the necessary information,



an explanation regarding that article or document;

- (f) attach anything on the person or on or in the premises which in his or her opinion has a bearing on the investigation concerned; and
- (g) if he or she wishes to retain anything contemplated in paragraph (f) for further examination or for safe custody, against the issue of a receipt, remove it from the person or premises:

Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished:

Provided further that if there is no person present to receive the receipt when it is issued, it shall be affixed at a prominent visible place on the premises.

(4) Any person from whom information is required under subsection (3)(a), (c) and (e) may be assisted at such enquiry by a legal representative, and shall at the commencement of such enquiry be so informed.

(5) The person referred to in subsection (1) may be searched or the premises referred to in that subsection may be entered and searched, only by virtue of a search warrant or an entry and search warrant issued by a magistrate, or judge of a Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation concerned, is in the possession or under the control of any person or on or in any premises and cannot reasonably be obtained in any other manner.

(6) The functions referred to in subsection (3) may only be performed by virtue of a warrant issued by a magistrate, or

judge of a Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article or document referred to in subsection (5) is in the possession or under the control of any person or on or in any premises.

(7) A warrant shall authorise any Commissioner or any member of staff or a police officer to perform the functions referred to in subsection (3) and shall to that end authorise such person to search any person or to enter and search any premises identified in the warrant.

(8) A warrant shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night at times which are reasonable in the circumstances.

(9) A warrant may be issued on any day and is of force until—

- (a) it is executed; or
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
- (c) the expiry of one month from the day of its issue; or
- (d) the purpose for the issuing of the warrant has lapsed,

whichever may occur first.

(10) A person executing a warrant under this section shall, at the commencement of such execution, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant:

Provided that if such person is not present, he or she

shall affix a copy of the warrant on the premises at a prominent and visible place.

(11) A person executing a warrant under this section or an entry or search under subsection (12) shall, at the commencement of such execution, identify himself or herself and if that person requires authorisation to execute a warrant under this section, the particulars of such authorisation shall also be furnished.

(12) Subject to the provisions of subsections (3), (4), (11), (13) and (14), any Commissioner, or any member of staff or a police officer upon request by a Commissioner, may, without a warrant, enter and search any premises, other than a private dwelling, for the purposes of attaching and removing, if necessary, any article or document —

(a) if the person or persons who may consent to the entering and search for an attachment and removal of an article or document consents or consent to such entering, search, attachment and removal of the article or document concerned; or

(b) if he or she, on reasonable grounds, believes —

(i) that a warrant will be issued to him or her if he or she applies for such warrant; and

(ii) that the delay in obtaining such a warrant would defeat the object of the entry and search.

(13) An entry and search in terms of subsection (12) shall be executed by day unless the execution thereof by night is justifiable and necessary.

(14) A person who may lawfully under this section enter and search any premises may use such force as may be

reasonably necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises:

Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(15) If during the execution of a warrant under subsections (5) to (11) or a search in terms of subsection (12), a person claims that an article or document found on the person or on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search shall, if he or she is of the opinion that the article or document contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

Compensation  
for expenses

18. Any person appearing before the Commission in pursuance to section 17(1)(c) who is not in the public service, is entitled to receive from monies appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.

Reports by  
Commission

19.(1) The Commission shall submit a report to the President and National Assembly every six months on its activities, the performance of its functions and the achievement of its objectives.

(2) In addition to the report contemplated in subsection (1), the Commission shall, as soon as possible, submit to the

President reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it.

(3) The Commission may, subject to the provisions of subsection (5), in the manner it deems fit, in writing, make known to the public authority, organisation or institution any finding, point of view or recommendation in respect of a matter investigated by it.

(4) If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the public authority, organisation or institution concerned shall within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether the public authority, organisation or institution, intends to take any steps to give effect to such finding or recommendation, if any such steps are required.

(5) The findings of an investigation by the Commission may be made available to the complainant and any person implicated thereby, if the Commission consider it necessary so to do, as early as practicable.

### **PART III - FINANCE, ACCOUNTS AND REPORTS**

20. The funds of the Commission shall consist of —

Funds of the  
Commission

- (a) such monies as may be appropriated by the National Assembly pursuant to an Appropriation Act for the purposes of the Commission;
- (b) any monies received by the Commission by way of donations, gifts or grants from any legal sources whether domestic or foreign; and
- (c) any proceeds from sale, lease or transfer of

movable or immovable property of the Commission.

Accounts  
and audit

21.(1) The financial year of the Commission shall be the calendar year.

(2) The Commission shall maintain proper accounts and other relevant records and prepare a statement of accounts in the form and manner approved by the Auditor-General.

(3) The accounts of the Commission shall be audited by the Auditor-General in accordance with Article 158 of the Constitution.

(4) Where the accounts and the statement of accounts of the Commission in respect of a financial year have been audited, the Commission shall furnish, not later than 3 months after the end of the financial year, to the Minister and the Minister responsible for finance, a copy of the statement together with a copy of any report by the Auditor-General on the statement of accounts or on the accounts of the Commission.

Annual  
report

22. The Commission shall, as soon as possible after the expiration of each financial year and in any event not later than the 31<sup>st</sup> day of March in any year, submit to the Minister, and the Minister responsible for finance, an annual report dealing generally with the administration and its activities during the preceding financial year and the Minister shall cause the report to be laid before the National Assembly.

#### PART IV - OFFENCES AND PENALTIES

Offences  
and  
penalties

23. A person who—

- (a) without just cause refuses or fails to comply with a notice under section 17(1)(c) or refuses to take the oath or to make an affirmation at

the request of the Commission in terms of section 17(1)(d) or refuses to answer any question put to him or her under section 17(1)(d) or refuses or fails to furnish particulars or information required from him or her under that section;

(b) after having been sworn or having made an affirmation contemplated in section 17(1)(d) gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;

(c) wilfully interrupts the proceedings at an investigation or misbehaves himself or herself in any manner in the place where such investigation is being held;

(d) in connection with any investigation does anything which, if such investigation were proceedings in a court of law, would have constituted contempt of court;

(e) anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;

(f) does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an investigation;

(g) contravenes any provision of section 9(3) or 17(11);

(h) fails to afford the Commission the necessary assistance referred to in section 9(2) or 15(5);  
or

- (i) acts contrary to the authority of a warrant or, without being authorised thereto under section 18, enters or searches any premises or attaches any article or document or performs any act contemplated in section 18(3),

is guilty of an offence and liable on conviction to a fine not exceeding SCR10,000 or to imprisonment for a period not exceeding six months.

#### **PART IV - ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

Staff of  
Commission

24.(1) The Commission shall employ such employees as may be reasonably necessary to assist the Commission in the performance of its functions.

(2) The employees shall be employed on such terms and conditions and receive such remuneration, allowances and other benefits as the Commission may, subject to the approval of the Minister, determine.

(3) The Commission may in the exercise of its powers or the performance of its functions by or under this Act or any other written law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

(4) A member of staff shall exercise the powers and perform the functions—

- (a) conferred upon him or her by or under this Act or any other written law; and
- (b) conferred upon or assigned to him or her by the Commission,



subject to the general or special directions and instructions that the Commission may, from time to time, issue to him or her.

**25.** A member of the staff of the Commission or any other person acting under the direction of the Commission shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

Application of provisions of the Penal Code

**26.** A suit or other legal proceedings shall not lie against the Commissioners or other employees of the Commission for any action taken or intended to have been taken in pursuance of the provisions of this Act.

Protection of action taken in good faith

**27.(1)** The Minister may, make regulations for carrying into effect the provisions of this Act.

Regulations

**(2)** Without prejudice to the generality of subsection (1), the regulations may provide for —

**(a)** the salary and allowances of the Commissioners including the Chairperson and the Deputy Chairperson; and

**(b)** any other matter required to be prescribed under this Act.

**(3)** The Commission may, make rules for the following matters in relation to the members of staff —

**(a)** the requirements for discharge and disciplinary steps;

**(b)** the powers, duties, conduct and discipline;

**(c)** the training of members of staff, including financial assistance for such training;

**(d)** the code of conduct to be complied with by members of staff;

- (e) subject to section 27, the legal liability of any member of staff in respect of any act done in terms of this Act;
- (f) the procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and the person to whom documents in connection with requests and communications of such members of staff must be submitted; or
- (g) any other matter which is necessary or required to be prescribed by rules under this Act.

Repeal and  
savings

**28.(1)** The Protection of Human Rights Commission Act, (Cap 301), is hereby repealed.

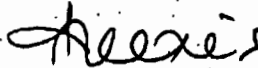
- (2) Notwithstanding the repeal under subsection (1)—
- (a) any person who, immediately before the commencement of this Act, has been appointed to a post under the repealed Act shall be deemed to have been so appointed under the corresponding provisions of this Act;
  - (b) anything done, including any regulation made or instruction issued or other administrative measures taken or any contracts entered into or any obligations incurred under the repealed Act which could be done under this Act and which were in force immediately before the commencement of this Act, shall be deemed to have been so done, issued, taken, entered into or incurred, as the case may be, under this Act until amended, withdrawn or repealed under this Act.

(3) Any reference in any written law to the Protection of Human Rights Act (Cap 301) shall, unless the context otherwise indicates or if clearly inappropriate, be construed as a reference to this Act, or to the corresponding provision thereof, as the case may be.

29. The National Human Rights Commission established under the repealed Act shall continue to be in force and function till the Commission under section 3 of this Act is established.

Transitional provisions

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 5th June, 2018.



Ms. Jutta Alexis  
Clerk to the National Assembly

**Strategic Priorities 2022 -2024**

<b>P1</b>	<b>Creating awareness and understanding of human rights by duty bearers and rights holders</b>
	<b>Indicator</b>
<b>Input</b>	Human Resources - Education/Communications Officer
<b>Activities</b>	Workshops (i.e. educational awareness-raising sessions with duty bearers and rights holders)
	Social media and website interaction (likes, follows, comments and Sheet)
	Creation and Production of Educational Materials
<b>Output</b>	Workshop Report based on Evaluation Forms
	Social Media Content
	Number of printed/created content
<b>Outcome</b>	<b>Progressive understanding of human rights by duty bearers and rights holders as evidenced through evaluation exercises.</b>
	Increased digital engagement
	Greater availability of human rights educational content to rights holders
<b>Impact</b>	Progressive awareness and understanding of human rights and human rights related topics
<b>P2</b>	<b>Monitoring national and international human rights standards and accessible mechanisms for addressing the human rights violations monitored</b>
	<b>Indicator</b>
<b>Input</b>	Human resources (i.e. Monitoring Officers)
<b>Activity</b>	Follow-up meetings with parent ministries / Collect Information
	Visit places of detention
<b>Output</b>	Follow up of monitoring reports / Monitor Implementation
	Monitoring Reports
<b>Outcome</b>	Increased monitoring of the State's implementation and reporting of United Nations international human rights treaties.
	Improved conditions of places of detention
<b>Impact</b>	Improved enjoyment of human rights by rights holders and respect for the right of dignity

<b>P3</b>	<b>Establishing mechanisms to investigate and manage human rights complaints</b>
	<b>Indicator</b>
<b>Input</b>	Human resources (i.e. Investigation Officers)
<b>Activity</b>	Processing inquiries, investigation, legal processes
<b>output</b>	Resolving alleged individual human rights complaints
<b>Outcome</b>	Reduction in alleged human rights violations received by the investigation
<b>Impact</b>	Improved respect and awareness of human rights
<b>P4</b>	<b>Producing advisory reports and studies and reviewing government policies, proposed and written law</b>
	<b>Indicator</b>
<b>Input</b>	Human resources (i.e. legal and research)
<b>Activity</b>	Researching and analysing the human rights issue and drafting necessary documents
<b>output</b>	Advisory reports
<b>Outcome</b>	Improved human rights results in government and the institutionalisation of the human rights approach
<b>Impact</b>	Improved human rights results for the people of Seychelles.
<b>P5</b>	<b>Networking with local and international organisations which actively promote respect for human rights</b>
	<b>Indicator</b>
<b>Input</b>	Human resources (i.e. Communications officer)
<b>Activity</b>	Meetings, collaborative programmes and activities
<b>Output</b>	Communications activity report
<b>Outcome</b>	Improved human rights awareness and cooperation between the Commission and other organisations
<b>Impact</b>	Improved human rights results for the people of Seychelles.

Human Right Index to be considered for the country



# THE SEYCHELLES HUMAN RIGHTS COMMISSION

## COMPLAINTS HANDLING AND INVESTIGATIONS PROCEDURES

May 2022

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## 1. DEFINITIONS

### 1.1 In these Procedures –

- (a) **“The Act”** refers to the *Seychelles Human Rights Commission Act* of 2018;
- (b) **“ADR”** refers to Alternative Dispute Resolution, which includes the resolution of a complaint through negotiation, mediation and/or conciliation;
- (c) **“Assessment”** refers to the Commission’s formal process of screening a complaint to determine jurisdictional authority and make an initial finding on its merits;
- (d) **“Chairperson of the Panel”** refers to the Chair of the Investigations Panel;
- (e) **“Child”** refers to any person under the age of eighteen (18);
- (f) **“Commission”** refers to the self-governing, neutral and independent body that is the Seychelles Human Rights Commission, as established by the *Seychelles Human Rights Commission Act* of 2018;
- (g) **“Complainant”** refers to a person, or a group of persons, that submits a complaint to the Commission;
- (h) **“Complaint”** refers to a verbal, written, or electronic communication submitted or addressed to the Commission, which contains an alleged human rights violation;
- (i) **“Conciliation”** refers to the process of an independent person intervening as an expert between a Complainant and a Respondent to reach an agreement.
- (j) **“Constitution”** refers to the *Constitution of the Republic of Seychelles*, 1993;
- (k) **“Day”** refers to any working day, which excludes Saturdays, Sundays and public holidays;
- (l) **“Finding”** refers to the conclusion, reached by the Commission, after an assessment or investigation of a complaint, or following an Investigations Hearing;

- (m) “**Investigations Hearing**” refers to a formal investigation, pursuant to section 16 of the *Seychelles Human Rights Commission Act* of 2018, and as contemplated in section 8 of these Procedures;
- (n) “**Human rights**” refers to the fundamental rights captured in Chapter III, Part I (Articles 15 to 39) of the *Constitution of the Republic of Seychelles, 1993*;
- (o) “**Investigation**” refers to an investigation as contemplated in section 16 of the *Seychelles Human Rights Commission Act* of 2018;
- (p) “**Mediation**” refers to the process of an independent person intervening as a facilitator between a Complainant and a Respondent to reach an agreement;
- (q) “**Negotiation**” refers to the process of conferring with a Complainant and a Respondent to reach an agreement;
- (r) “**Panel**” refers to an Investigations Panel, constituted by the persons outlined in subsection 8.3 of these Procedures;
- (s) “**Report**” refers to a written presentation of the findings produced after a site visit, an investigation or an Investigations Hearing;
- (t) “**Respondent**” refers to a person, or a group of persons, that is alleged to have violated one or more human right;
- (u) “**Staff Directive**” refers to the issuance of guidelines, instructions or directions to a member of the Commission’s staff;
- (v) “**Standard Operating Procedures**” (or SOP) refers to a step-by-step guide that is specific to a part of the Commission’s routine operation, which details the steps necessary to effectively fulfill that part of the Commission’s operation;
- (w) “**Terms of Reference**” refer to an outline of what must be considered and investigated by the Commission as part of an Investigations Hearing.



## 2. INTRODUCTION

2.1 These Procedures aim to guide persons as to how the Commission handles complaints, conducts investigations, and makes its opinions and recommendations, and, as such, they are critical for providing well-founded and reasoned opinions, as well as recommendations, in the most effective and efficient way possible.

2.2 The Seychelles Human Rights Commission (hereinafter “the Commission”) is established under section 3 of the *Seychelles Human Rights Commission Act* of 2018 (hereinafter “the Act”). Pursuant to section 3 (2) of the Act, *the Commission shall be a self-governing, neutral and independent body and shall not be subject to the direction or control of any person or authority.*

2.3 The mandate of the Commission is to promote and protect human rights in Seychelles, and, to facilitate the Commission to execute this mandate, the Act provides the Commission with a broad range of powers and functions.

2.4 Section 14 (4) of the Act provides that *the Commission is competent-*

*(a) to investigate on its own initiative, or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it shall, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be initiated in a competent court for necessary relief or may direct a complainant to an appropriate forum; and*

*(b) to initiate proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons, including proceedings relating to the constitutionality of a law or the provisions of a law.*

**2.5** Section 15 of the Act also provides that *the Commission may, by mediation, conciliation or negotiation endeavour—*

*(a) to resolve any dispute; or*

*(b) to rectify any act or omission,*

*emanating from or constituting a violation of or threat to any human right.*

**2.6** As such, it is essential to recognise that the Commission is not a Court or Tribunal, and it does not render binding decisions. However, given that it is a neutral and independent body mandated to promote and protect human rights in Seychelles, with broad investigatory powers, and the power to seek enforcement of its decisions through the courts, its opinions and recommendations are highly persuasive and should be afforded the utmost respect. This is further highlighted in the legal obligation, as provided in section 19 (4) of the Act, which states that

*If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the public authority, organisation or institution concerned shall within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether the public authority, organisation or institution, intends to take any steps to give effect to such finding or recommendation, if any such steps are required.*

**2.7** It is important for the Respondent(s) to note that, where the same is a public authority, organisation or institution, the 60<sup>th</sup> day, as provided in the above subsection, is the latest deadline for the Respondent(s) to submit a response to the Commission's findings and recommendations, albeit the Commission may request for a response to be submitted within a shorter time frame, should it be of the opinion that the potential human rights violation in question needs to be urgently addressed. Further, given that the above is a statutorily required response period for a Respondent that is a public authority, organisation or institution, the Commission will interpret a non-response from the Respondent(s) within the prescribed time limit as a tacit acceptance of its findings or recommendations.

**2.8** Moreover, section 16 (8) of the Act provides that, *subject to the provisions of this Act, the procedure to be followed in conducting an investigation shall be determined by the Commission with due regard to the circumstances of each case.* Further, section 16 (9) of the Act provides that *the Commission shall make known publicly the particulars of the procedure which it has determined under of subsection (8).*

**2.9** The Commission keeps these Procedures under regular review to ensure that they are as effective and efficient as possible. As such, the Commission may amend these Procedures from time to time, where necessary.

**2.10** These Procedures shall be read with the Act, supported by internal standard operating procedures and staff directives.

**2.11** There may be times in certain circumstances when the Commission may need to deviate from these Procedures. Where such deviation is necessary, the Commission shall provide their reasons in writing.

### **3. MAKING ENQUIRIES AND COMPLAINTS**

**3.1** Upon receiving a formal complaint, the Commission may carry out an initial assessment of the complaint. At this stage, unless the person making the complaint wishes to personally populate the Enquiries Form in Form 1 of these Procedures, a duly designated member of staff shall ensure that the Enquiries Form in Form 1 of these Procedures contains the following information:

- (a) The name, date of birth, sex and gender identity of the person making the complaint;
- (b) The address, nationality and country of residence of the person making the complaint;
- (c) The telephone number and email address of the person making the complaint;
- (d) The national identification number or passport number of the person making the complaint;
- (e) The spoken language of the person making the complaint, including whether they would require an interpreter; and
- (f) A brief description of the complaint, including whether the person making the complaint has lodged a complaint with another institution.

**3.2** At this stage, the Commission can discuss the matter with the person making the complaint and provide preliminary information about human rights, the Commission's mandate, the criteria for making complaints and the investigations procedure.

**3.3** During the assessment, the Commission may choose not to refer the matter before it to an Investigations Officer, should the matter not meet the complaints criteria, detailed in section 5 of these Procedures. Furthermore, should the Commission determine that there is another mechanism specifically established and, thus, more appropriate to receive the matter, the Commission may suggest that the matter be referred to the same in the first instance.

**3.4** Where the Commission decides not to refer the matter to an Investigations Officer and the person to whom the matter relates is aggrieved by such decision, the person may appeal the decision by completing and submitting Form 3 of these Procedures (Appeals Form) to the Investigations Commissioner, within thirty (30) days of the said decision. The Investigations Commissioner may then either refer the matter to the Investigations Officer for the Investigations Officer to fill out Form 2 of these Procedures (Complaints Form), or maintain the Commission's decision not to refer the matter to investigation, providing full reasons for the same.

**3.5** To initiate an appeal, the person making the complaint shall populate Form 3 of these Procedures (Appeals Form) and submit it to the Commission either by:

- (a) Delivering a physical copy of the form at the Commission's office;
- (b) Emailing the form to [registrar@seychelleshumanrights.com](mailto:registrar@seychelleshumanrights.com); or
- (c) Posting it in a confidential envelope to the Commission's address at 1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

**3.6** A person can make a formal enquiry at the Commission by populating Form 1 of these Procedures (Enquiries Form) and submitting it to the Commission either:

- (a) Via email, by addressing it to [registrar@seychelleshumanrights.com](mailto:registrar@seychelleshumanrights.com);
- (b) Over the telephone, by calling the Commission on 4303220; or
- (c) By visiting the Commission's office at-  
1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

**3.7** A person can lodge a formal complaint at the Commission by populating Form 1 of these Procedures (Complaints Form) and submitting it to the Commission either:

- (a) Via email, by addressing it to [registrar@seychelleshumanrights.com](mailto:registrar@seychelleshumanrights.com);
- or
- (b) By visiting the Commission's office-  
1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

**3.8** In the event that a Complaints Form (Form 2 of these Procedures) has to be populated by a Commission's member of staff as a result of the person making the complaint requiring assistance to do so, the person making the complaint can:

- (a) Telephone the Commission on 4303220;
- (b) Visit the Commission's office at-  
1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé; or
- (c) Organise a video call with the Commission by calling the Commission on 4303220 or by emailing [registrar@seychelleshumanrights.com](mailto:registrar@seychelleshumanrights.com).

**3.9** In the event that a Complaints Form (Form 2 of these Procedures) has to be populated by a Commission's member of staff, due to it not being feasible, on account of individual circumstances, for the person making the complaint to personally populate it, a complaint can be taken over the phone by calling the Commission on 4303220. A complaint submitted in this manner will only be accepted in exceptional circumstances at the discretion of the Commission.

#### **4. POPULATING THE COMPLAINTS FORM**

**4.1** Unless the person making the complaint wishes to fill in a Complaints Form (Form 2 of these Procedures), a duly designated member of staff shall ensure that the form contains the following information:

- (a)** The name, date of birth, sex and gender identity of the person making the complaint;
- (b)** The address, nationality and country of residence of the person making the complaint;
- (c)** The telephone number and email address of the person making the complaint;
- (d)** The national identification number or passport number of the person making the complaint;
- (e)** The spoken language of the person making the complaint, including whether they would require an interpreter;
- (f)** The same details as above of any person, where the person making the complaint is not the person that has allegedly suffered the human rights violation;
- (g)** Full details of the alleged human rights violation, including but not limited to:
  - (i)** Details of the time and place of the alleged human rights violation;
  - (ii)** Details of persons who were involved in the alleged human rights violation;
  - (iii)** A description of what occurred to cause the alleged human rights violation;
  - (iv)** Any documentation that the person submitting the complaint may have concerning the alleged human rights violation;
  - (v)** Details of persons who may have witnessed the alleged human rights violation;

- (vi) Details as to the steps the person making the complaint has taken to seek redress for the alleged human rights violation; and
  - (vii) What type of redress the person making the complaint is seeking.
- (h) Whether the person making the complaint consents to the inclusion of their full names in any media article published by the Commission, provided that, where the person making the complaint elects for their name not to be disclosed, the person making the complaint is required to provide full reasons therefor. The duly designated member of staff filling in the Complaints Form (Form 2 of these Procedures) shall also ensure that the person making the complaint acknowledges as well as understands that their election for their name not to be disclosed would only apply to any media article published by the Commission and not to the publication of the Commission’s Investigations and Analysis Reports, as per subsection 6.2 (f) of these Procedures, unless directed otherwise by the Chairperson of the Investigations Panel (hereinafter “the Panel”).
- (i) Whether the person making the complaint consents to any alternative dispute resolution (ADR) mechanisms that may be available;
- (j) Whether the person making the complaint consents to the disclosure of information provided to the Commission to other persons as part of any investigation. In the Commission’s attempt to secure any possible redress, where the person making the complaint elects not to have their information disclosed, the person making the complaint is required to provide full reasons therefor. The duly designated member of staff filling in the Complaints Form (Form 2 of these Procedures) shall also ensure that the person making the complaint records, on the same, their acknowledgment and understanding that, should they not consent to the disclosure of their information to other persons or entities as part of



any investigation, this may lead to the Commission deciding not to undertake ADR or commence an investigation.

**(k)** Acknowledgment that the person making the complaint has read and understood these Procedures.

**(l)** Acknowledgment that the person making the complaint understands that the Commission is an independent truth-seeking institution, which is not their legal representative during the investigations process.

## 5. COMPLAINTS THAT THE COMMISSION MAY INVESTIGATE

**5.1** As per section 14 (4) (a) of the Act, the Commission can investigate alleged human rights violations. The Commission exercises this power systemically with its other functions and powers to ensure the protection and promotion of human rights for all persons in Seychelles.

**5.2** As human rights are intertwined within the system of governance, alleged human rights violations that the Commission may investigate refer to human rights under Chapter III of the *Constitution*, where there is currently no mechanism in place in the system of governance or the existing mechanism(s) may not be consistent with, or may not be up to a certain standard, to ensure the protection of human rights.

**5.3** Furthermore, as the Commission also reviews laws and policies, monitors international human rights obligations and provides education and training, the Commission can address human rights issues through a systemic approach which may assist in resolving a complaint received by it and address the root causes of the alleged human rights violations.

**5.4** Therefore, the Commission shall itself determine the appropriate forum or jurisdictional body for the complaint. If the complaint can be effectively addressed under an appropriate forum already in existence, the Commission shall direct the person making the complaint to the same. Should the forum not meet the necessary human rights standards, the Commission may conduct a systemic review concerning that forum.

**5.5** If there is no appropriate forum in existence at the time that the complaint is brought before the Commission, or the existing mechanisms may not be consistent with or may not be up to a standard to ensure the protection of human rights, the Commission shall use the following criteria to evaluate the complaint:

- (a)** The complaint is consistent with-
  - (i)** The Charter of Human Rights and Fundamental Freedoms under Chapter III of the *Constitution*;
  - (ii)** The Charter of the United Nations;

- (iii) The Universal Declaration of Human Rights;
  - (iv) The African Charter of Human and Peoples' Rights;
  - (v) The Human Rights Treaties of the United Nations, as ratified by Seychelles; or
  - (vi) Any other applicable instruments in the field of human rights law.
- (b) The complaint has not been delayed for more than five years without reasonable cause;
  - (c) The complaint provides a factual description of the alleged violations;
  - (d) The complaint provides the redress sought by the person making the complaint;
  - (e) The person making the complaint has not already received redress for the same; and
  - (f) The complaint has been submitted in good faith and is not frivolous or vexatious.

**5.6** Where the complaint does not meet the above criteria, the Investigations Commissioner may decide not to commence an investigation. Where the Investigations Commissioner decides that the complaint does not meet the above criteria, they shall communicate, in writing, the full reasons for their determination to the person making the complaint. Moreover, should the person to whom the matter relates be aggrieved by such decision, the person may appeal the decision by completing and submitting Form 3 of these Procedures (Appeals Form) to the Investigations Appeals Commissioner, within thirty (30) days of the decision. They may then either admit the matter to be investigated or maintain the Investigations Commissioner's decision not to refer the matter to an investigation, providing full reasons for the same.

**5.7** Where the complaint successfully meets the above criteria, the Investigations Commissioner shall admit the complaint to be investigated.

## **6. INVESTIGATIONS**

**6.1** Where the Investigations Commissioner decides to conduct an investigation into a complaint or where the Commission decides, through its own initiative, to investigate an alleged violation of human rights, the Chief Executive Officer shall, within seven (7) days of the Investigations Commissioner's decision, appoint an Investigations Officer to conduct the investigation.

**6.2** Once appointed in accordance with the above section, the Investigations Officer, in consultation with the Investigations Commissioner, shall adhere to the following process in their investigation of the complaint-

**(a)** Inform the Complainant of the Commission's decision to investigate the complaint, where applicable;

**(b)** Ensure that all the information is properly recorded on the Complaints Form (Form 2 of these Procedures), including copies of any articles or documents presented to the Investigations Officer by the Complainant;

**(c)** Shall additional information be required during the investigation, the Investigations Commissioner or the Investigations Officer, the latter being duly authorised by a Commissioner, may, pursuant to section 16 (1) (a) and (b) of the Act, at any stage of the investigation:

- (i)** Contact the necessary persons by any reasonable means and request any relevant information;
- (ii)** Conduct meetings with any necessary persons that might be relevant to the investigation;
- (iii)** Conduct research to obtain any relevant information, which may include the completion of surveys or questionnaires;

- (iv) Unless exercising powers under section 17 of the Act, having obtained the required permission, conduct any inspections that are relevant to the investigation, which may involve the taking of photographic evidence; and
- (v) Conduct any search and seizure necessary for the investigation, as per section 17 of the Act.

- Provided that the Investigations Commissioner or the Investigations Officer inform all persons approached by the same during the course of the investigation of their entitlement to a representative of their choice, at their own cost, which may include a legal representative and a support person.

(d) Send a letter, at such time as deemed appropriate by the Investigations Commissioner or Investigations Officer, to the Respondent, informing them of:

- (i) The name of the Complainant, if applicable;
- (ii) The human rights matter under investigation, including any allegations, if applicable;
- (iii) The requirement for the Respondent to respond, in writing, to the alleged human rights matter under investigation, and the deadline for providing the same; and
- (iv) The consequences of the Respondent's failure to provide a response by the stipulated deadline.

- Provided that the Commission may, where it deems necessary to prevent or to cease the continuation of an alleged human rights violation, issue interim recommendations or propose remedial action through an Interim Investigations and Analysis Report.

(e) Ensure that an appropriate reminder is communicated to the Respondent in advance of the stipulated deadline and consider granting an extension to the same, should the Respondent request it, providing full reasons for such request.

(f) If the Investigations Officer receives a response from the Respondent, the Investigations Commissioner and Investigations Officer will assess whether any further information is necessary. If they determine that further information is necessary, they shall continue to investigate the matter, as per these Procedures. If they determine that no further information is required, the Investigations Officer shall, in collaboration with the Human Rights Analyst, complete an Investigations and Analysis Report based on all the information collected by the Commission, including any allegations concerning the violation of human rights under investigation. This Report shall include the following:

- (i) The mandate of the Commission;
- (ii) The complaint, if applicable;
- (iii) Observations, if applicable;
- (iv) The human rights issue;
- (v) The relevant human rights standard;
- (vi) An analysis of the complaint and human rights issue in juxtaposition with the relevant human rights standard; and
- (vii) Conclusions and/or Recommendations.

- Provided that the Investigations and Analysis Report is certified by the Investigations Officer and the Human Rights Analyst.

(g) Where the Commission decides to conduct an investigation on its own initiative and where the Commission, through the exercise of other Procedures under its mandate, witnesses a potential human rights violation, and is able to observe and discuss directly with a Respondent that is a public authority the potential human rights concern, the Commission may issue an Investigations and Analysis Report, as detailed in the subsection above, directly to the public authority.

**(h)** If the Respondent fails to respond by the stipulated or extended deadline, the provisions of subsection 6.2 (f) of these Procedures shall *mutatis mutandis* apply to the Investigations and Analysis Report, and the Investigations Officer shall, thus, draft the same in collaboration with the Human Rights Analyst. Further, given that the above is a statutorily required response period for a Respondent that is a public authority, organisation or institution, the Commission will interpret a non-response from the Respondent(s) within the allotted time limit as a tacit acceptance of its findings or recommendations.

**(i)** Once the Investigations Officer and Human Rights Analyst complete and certify the Investigations and Analysis Report, the Investigations Officer shall submit the same to the Investigations Commissioner, who:

- (i)** Where no further information is necessary, may validate and issue the Report;
- (ii)** Direct that the complaint be referred for ADR;
- (iii)** Direct that the complaint be referred to an Investigations Hearing;
- (iv)** Direct that the complaint be closed; or
- (v)** Where further information is required, may direct the Investigations Officer to continue the investigation.

**(j)** Where the Investigations Commissioner is of the opinion that no further information is necessary and proceeds to validate and issue the Report, they may direct the Chief Executive Officer to transmit the same to the Complainant and Respondent(s). If the Respondent(s) agrees with the findings and recommendations found in the Report, the Chief Executive Officer shall monitor the implementation of the same and provide any necessary consultation concerning their implementation. If the Respondent(s) does not agree with the findings and recommendations found in the Report, the Commission may refer the matter to an Investigations Hearing or, where the Respondent is a public authority, organisation or institution under subsection 6.2 (g) of these Procedures and an Investigations Hearing is deemed unnecessary by the Investigations Commissioner, the Investigations Commissioner

may maintain the Commission's opinion and recommendations in the Investigations and Analysis Report and may seek enforcement through a competent court, as per section 14 (4) (b) of the Act, by sending to the Respondent(s) a Final Position after Response. The Final Position after Response shall include the following:

- (i) The Response;
- (ii) The Position of the Commission;
- (iii) Conclusion, including option for further discussion and execution before the Courts.

(k) Where the Investigations Commissioner directs that the complaint be closed and the Complainant is aggrieved by such decision, the Complainant may appeal the decision by completing and submitting Form 3 of these Procedures (Appeals Form) to the Investigations Appeals Commissioner, within thirty (30) days of the decision, who may then either decide to uphold the appeal and, as such, refer the complaint back to the Investigations Commissioner with directions, or to maintain the Investigations Commissioner's decision to close the complaint.

(l) To initiate an appeal, the Complainant shall populate Form 3 of these Procedures (Appeals Form) and submit it to the Commission either by:

- (a) Delivering a physical copy of the form at the Commission's office;
- (b) Sending it electronically to the Registrar of Complaints at [registrar@seychelleshumanrights.com](mailto:registrar@seychelleshumanrights.com); or
- (c) Post it in a confidential envelope to the Commission's address at-  
1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

(m) Throughout the investigation, the Investigations Officer shall, as far as is reasonably practicable, update the Complainant on the progress of the investigation.

(n) The Investigations Commissioner may, where the Respondent is a public authority, organisation or institution under subsection 6.2 (g) of these Procedures, and where



the Investigations Commissioner deems that it is in the public interest to do so, publish on the website of the Commission any Investigations and Analysis Report, Response from the Respondent, Final Position after Response, and any other relevant document or information relating to the investigation.

## **7. ALTERNATIVE DISPUTE RESOLUTION (ADR)**

**7.1** The Commission may, pursuant to section 15 of the Act, resolve complaints via negotiation, conciliation or mediation, where the Commission sees it justifiable, based on an Investigations and Analysis Report, for it to resolve the matter in such a way.

**7.2** Where the Investigations Commissioner has decided on the method of ADR to be used, the Chief Executive Officer shall appoint an ADR officer to conduct the same. The Chief Executive Officer may appoint the following persons as an ADR officer:

- (a) A Commissioner;
- (b) A member of the Investigations Unit, the Legal Unit or secretariat of the Chief Executive Officer; or
- (c) Any other member of staff the Chief Executive Officer deems qualified to conduct the same.

**7.3** The duly appointed ADR officer shall, at all times when conducting an ADR session, observe the rule of natural justice and these Procedures.

### ***ADR by Negotiation***

**7.4** To commence negotiations, the appointed ADR officer shall communicate the relevant alleged facts of the complaint to the Respondent. Such communications shall be made either orally or in writing, provided that, where communication is in oral form, such communication shall be reduced into writing and sent to the Respondent.

**7.5** The ADR officer shall facilitate as many communications between the Complainant and the Respondent as are necessary to successfully resolve the complaint, provided that the ADR officer shall make every effort to complete such negotiations within a thirty (30) day period.

**7.6** The parties shall be entitled to the assistance of a representative of their choice, at their own cost, which may include a legal representative and a support person.

**7.7** If the ADR officer is able to reach an agreement in respect to the negotiations, the ADR officer shall reduce the terms of the agreement into writing, and the Complainant and the Respondent will be given the opportunity to accept the same. The acceptance of the agreement shall be formalised by the Complainant's and the Respondent's signing of the same, in triplicate, which shall also be dated. Further, the ADR officer shall ensure that the Complainant and the Respondent, prior to signature of the agreement, understand the terms of the agreement, which, once the Complainant and the Respondent have both signed, shall be certified by the ADR officer. A copy of the signed and certified agreement shall be given to the Complainant and the Respondent, and a copy of the same shall be filed appropriately at the Commission.

#### *Non-Resolution of Complaint*

**7.8** If no agreement is reached in respect to the negotiations, the ADR officer shall notify, in writing, both the Complainant and the Respondent of the same. The ADR officer shall also notify the Investigations Commissioner that they are unable to reach an agreement in respect to the negotiations, providing:

- (a) Full reasons in respect to the non-resolution of the complaint; and
- (b) A copy of the Investigations and Analysis Report.

**7.9** The Investigations Commissioner may, once written notification has been received from the ADR officer, direct the ADR officer to re-attempt negotiations, giving full reasons for their direction.

**7.10** If the Investigations Commissioner is of the opinion that the complaint cannot be resolved through negotiations, they may:

- (a) Direct that the complaint be referred for mediation or conciliation;

- (b) Direct that the complaint be referred to an Investigations Hearing; or
- (c) Direct that the complaint be closed, in accordance with subsection 9.2 of these Procedures. Where a Complainant is aggrieved by the decision to close the complaint, section 6.2 (k) of these Procedures shall *mutatis mutandis* apply concerning any appeal by the Complainant.

- Provided that the Investigations Commissioner gives full reasons for their direction.

### ***ADR by Mediation***

**7.11** Prior to mediation, the Complaints Registrar shall contact the Complainant and the Respondent to ascertain a mutually convenient date for the mediation.

**7.12** Once a convenient date for the mediation has been agreed upon by both parties, the duly appointed ADR officer shall communicate a notice to the Complainant and the Respondent for such mediation. The notice shall contain the following:

- (a) The place, time and date of the mediation;
- (b) A summary of the complaint; and
- (c) A summary of the mediation procedures, the rights and responsibilities of the Complainant and the Respondent at the mediation.

**7.13** Pursuant to section 15 of the Act, the mediation shall be conducted by the duly appointed ADR officer, who shall be impartial and neutral, in a professional manner that is informal, consensual and open, with the aim of resolving the complaint in question, provided that-

- (a) The mediation shall be conducted in English, unless the ADR officer directs otherwise. If a translator is required, the person that requires the

services of an interpreter must provide reasonable notice to the ADR officer, who shall arrange for a translator to be provided;

- (b)** The rule of natural justice shall be observed;
- (c)** The parties shall be entitled to the assistance of a representative of their choice, at their own cost, which may include a legal representative and a support person;
- (d)** The mediation may be conducted in any manner that the ADR officer deems justifiable and necessary, including through electronic means. In the cases of children and vulnerable persons, the ADR officer may direct for special provisions to be made;
- (e)** A mediation report shall be properly recorded and typed, which shall include the following:

  - (i)** The date, place and time of the mediation;
  - (ii)** The participants involved in the mediation;
  - (iii)** Where the mediation has been successful, an attached copy of the mediation agreement; and
  - (iv)** Where the mediation has been unsuccessful, the full reasons in respect to the non-resolution of the complaint.
- (f)** The mediation shall be closed to the public and the result of the same shall be kept private and confidential;
- (g)** The ADR officer may adjourn the mediation for any reason they see fit;

- (h) The parties shall ensure that they comport themselves in a respectful manner, refraining from interrupting and insulting each other during the mediation; and
- (i) The ADR officer may issue any direction justifiable and necessary to ensure the proper functioning of the mediation.

*Procedure at Mediation*

**7.14** Before commencing the mediation, the ADR officer shall ascertain whether all parties have been properly notified of the mediation. If the parties have not been properly notified, the ADR officer shall adjourn the mediation to ensure that all parties have been properly notified. Should either party fail to attend the mediation after being properly notified of the mediation, the ADR officer may direct for the mediation to be adjourned, or resolve that the mediation has failed.

**7.15** After ascertaining the appearance of the parties, the ADR officer shall explain:

- (a) The entitlement of the parties to the assistance of a representative of their choice, at their own cost, which may include a legal representative and a support person;
- (b) The purpose of the mediation;
- (c) The role of the ADR officer as an impartial and neutral third party that does not disclose their opinion concerning the complaint but acts as a facilitator between the parties;
- (d) The informal, consensual and open nature of the mediation; and

- (e) The responsibility of the parties to comport themselves in a respectful manner, refraining from interrupting and insulting each other during the mediation.

**7.16** After the above explanation, the ADR officer will ask the parties whether they require further clarification on any part of the aforementioned. Once the ADR officer has supplied such clarification where needed, the ADR officer shall proceed to ask the parties whether there are any agreed facts and, if so, note them for the purposes of the mediation.

**7.17** Once the ADR officer has ascertained whether there are any agreed facts, the ADR officer shall then proceed to ask the Complainant to explain their version of events that are in dispute. Once the Complainant has been given the opportunity to explain their version of events, the ADR officer shall invite the Respondent to explain their version of events. Where the ADR officer observes overlaps between the parties' versions of events, the ADR officer shall invite the parties to consider such overlaps. The ADR officer will then provide the parties with an opportunity to discuss their versions of events together in an appropriate manner, with a view to resolving the complaint.

**7.18** Once the ADR officer has exhausted the above discussion, the ADR officer may then invite the parties to go into breakout rooms to consider any proposed resolution. The ADR officer may go into the breakout rooms and facilitate the parties to resolve the complaint.

**7.19** Once the breakout discussions have been exhausted, the ADR officer shall invite the parties back to a full sitting and ascertain whether a resolution has been reached in respect to the complaint.

**7.20** If the parties have reached an agreement in respect to the complaint, the ADR officer shall reduce the terms of the agreement into writing, and the Complainant and the Respondent will be provided with the opportunity to accept the same. The acceptance of the agreement shall be formalised by the Complainant's and the Respondent's signing of the same, in triplicate, which shall also be dated. Further, the ADR officer shall ensure that the

Complainant and the Respondent, prior to signature of the agreement, understand the terms of the agreement, which, once the Complainant and the Respondent have both signed, shall be certified by the ADR officer. A copy of the signed and certified agreement shall be given to the Complainant and the Respondent, and a copy of the same shall be filed appropriately at the Commission.

#### *Non-Resolution of Complaint*

**7.21** If no agreement is reached in respect to the mediation, the ADR officer shall notify, in writing, both the Complainant and the Respondent of the same. The ADR officer shall also notify the Investigations Commissioner that they are unable to reach an agreement in respect to the mediation, providing:

- (a) Full reasons in respect to the non-resolution of the complaint; and
- (b) A copy of the Investigations and Analysis Report.

**7.22** Once the Investigations Commissioner has received the report, the Investigations Commissioner may:

- (a) Direct that the complaint be referred for conciliation;
- (b) Direct that the complaint be referred to an Investigations Hearing; or
- (c) Direct that the complaint be closed, in accordance with subsection 9.2 of these Procedures. Where a Complainant is aggrieved by the decision to close the complaint, section 6.2 (k) of these Procedures shall *mutatis mutandis* apply concerning any appeal by the Complainant.

- Provided that the Investigations Commissioner gives full reasons for their direction.



### ***ADR by Conciliation***

**7.23** The provisions of subsections 7.10 to 7.22 of these Procedures, except for subsection 7.15 (c) and 7.22 (a), in respect to mediation shall *mutatis mutandis* apply to conciliation.

**7.24** In respect to conciliation, the role of the ADR officer shall be an impartial and neutral third party that provides human rights expertise, which includes their opinions, to the parties in order to facilitate a consensual resolution of the complaint.

## **8. INVESTIGATIONS HEARINGS**

**8.1** The Commission may, pursuant to section 16 (1) (a) of the Act, conduct an Investigations Hearing concerning any complaint before the Commission.

**8.2** An Investigations Hearing may be conducted in the following circumstances, which include, but are not limited to:

- (a) Where ADR has failed;
- (b) Where the matter relates to a systematic human rights issue;
- (c) Where the Respondent has failed to provide an adequate response;
- (d) Where the matter relates to alleged human rights violations of a serious nature; or
- (e) Where directed by the Investigations Commissioner.

**8.3** Where the Commission decides to conduct an Investigations Hearing, the Chief Executive Officer shall appoint a Panel, which shall represent the Commission, made up of the following persons:

- (a) The Chairperson or any other Commissioner or member of staff duly designated by the Chief Executive Officer, who shall chair the Panel and also act as the scribe;
  - Only a member of staff who has not been involved in any part of the assessment or determination or decision concerning the complaint being investigated may be eligible for designation.
- (b) Two Commissioners designated by the Chief Executive Officer;
  - In the event that the Chairperson, Deputy Chairperson or any other Commissioner has any interest in any matter connected with an Investigations Hearing, they, as the case may be, shall declare such interest as soon as is practicable and shall, unless

the Commission directs otherwise, recuse themselves from the Investigations Hearing, in accordance with section 16 (12) of the Act.

*Commencing an Investigations Hearing*

**8.4** Where a Panel is appointed for the purposes of an Investigations Hearing, the same, based on the Investigations and Analysis Report, shall draft the Terms of Reference (hereinafter “the ToR”) for the Investigations Hearing.

**8.5** After drafting the ToR, the Panel shall, pursuant to section 16 (1) of the Act, through a member of staff duly designated by the Commission, deliver a notice, in writing, under the hand of a Commissioner on the Panel, addressed to the Complainant, Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing, to appear before the Panel at a time and place specified in such notice, and to produce to it all articles or documents in the possession, or custody, or under the control of any such person. The Panel may question them under oath or affirmation in any matter which may be necessary in connection with the Investigations Hearing. The Panel shall also ensure that such notice contains the reasons why such person’s presence is needed, including why their oral evidence is required and/or why such article or document should be produced. Notwithstanding the foregoing, the notice, pursuant to section 16 (1) (c) of the Act, must include the following:

- (a) The place, time and date of the Investigations Hearing;
- (b) A summary of the complaint;
- (c) The purpose for the person being requested to attend the Investigations Hearing, providing the reasons why such person’s presence is needed;
- (d) An indication as to whether the person is required to produce any article or document to the Investigations Hearing which may be necessary in connection with the Investigations Hearing, providing the reasons why such article or document should be produced; and

- (e) Any further information that the Chairperson of the Panel may deem necessary, including but not limited to:
  - (i) their entitlement to the assistance of a legal representative at their own cost;
  - (ii) how the aforementioned persons may peruse the Investigations and Analysis Report and all accompanying documents pursuant to section 16 (6) of the Act, read with section 16 (11) of the Act, and
  - (iii) information in respect to their competence, compellability and privilege, including that of self-incrimination, the offence of perjury and the offence under section 23 (b) of the Act.

**8.6** The Investigations Hearing must be set at least thirty (30) days from the date of the notice, unless the Chairperson of the Panel is of the opinion that the alleged facts of the complaint constitute an urgent matter, at which point the Chairperson of the Panel may dispense with the notice period.

#### *General Procedure of Investigations Hearings*

**8.7** Subject to section 16 of the Act, the Investigations Hearings shall be conducted in an inquisitorial, fair and impartial manner, with the aim of collecting credible evidence so that reasonable and timely findings concerning the complaint being investigated can be made, provided that-

- (a) The Investigations Hearing shall be conducted in English, unless the Chairperson of the Panel directs otherwise. If a translator is required, the person that requires the services of an interpreter must provide reasonable notice to the Chairperson of the Panel, who shall arrange for a translator to be provided.

- (b)** The rule of natural justice shall be observed, including ensuring that the Complainant, the Respondent or any other person who appears to be implicated in the matter connected with the Investigations Hearing are given an opportunity to be heard by way of giving evidence or making submissions, either orally or in writing.
  
- (c)** The Complainant, the Respondent or any person who appears to be implicated in the matter connected with the Investigations Hearing shall, pursuant to section 16 (7) of the Act, have an opportunity to be heard at the Investigations Hearing by-

  - (i)** Producing before the Panel oral or physical evidence, including personal statements;
  - (ii)** Calling any person, determined by the Panel, to produce oral or physical evidence; and
  - (iii)** Questioning, through the Panel, any persons who have appeared before the Panel either personally or using the assistance of their legal representative.
  
- (d)** The Chairperson of the Panel may, pursuant to section 16 (1) (d) of the Act, administer an oath to or take an affirmation from any person appearing before the Panel, irrespective of whether or not such person has been required under the said paragraph to appear before the Panel, and question them under oath or affirmation in connection with any matter which may be necessary to the Investigations Hearing.

  - (i)** Any person questioned under this paragraph, and in accordance with section 16 (2) (i) of the Act, shall be competent and compelled to answer all questions put to them regarding any fact or matter connected with the Investigations Hearing, notwithstanding that the answer may incriminate them. Subject to the aforementioned,

the law regarding privilege as applicable to a witness summoned to provide evidence in a criminal case in a court of law applies in relation to the questioning of a person appearing before the Panel, as set out in section 16 (5) of the Act.

(e) The Chairperson of the Panel may require any person appearing before the Panel to produce to the Panel all articles or documents in the possession or custody or under the control of any such person that may be necessary in connection with the Investigations Hearing.

(i) Any person required to produce an article or document under this paragraph, and pursuant to section 16 (2) (ii) of the Act, shall be compelled to produce any article or document which is in their possession or custody or is under their control, which may be necessary in connection with the Investigations Hearing.

(f) Notwithstanding any provision of the Act, the Panel may at any point during the Investigations Hearing, on the same conditions as those detailed in paragraph 8.7 (d) (i) of these Procedures-

(i) Put any question to any person appearing before the Panel;

(ii) Rephrase any question put by the Complainant, the Respondent or any other person implicated in the matter connected with the Investigations Hearing;

(iii) Clarify the content of any evidence submitted; and

(iv) Elicit any information from any person appearing before the Panel.

(g) Any person in relation to paragraphs (d), (e) and (f) is only competent and compelled to answer a question, or compelled to produce any article or document contemplated in those paragraphs if-

- (i) The Panel is satisfied, pursuant to section 16 (3) (a) of the Act, that to require such information from such person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
- (ii) In the Panel's judgment, pursuant to section 16 (3) (b) of the Act, such person has refused or is likely to refuse to answer a question or to produce any article or document on the basis of their privilege against self-incrimination. Subject to the above-stated, the law regarding privilege as applicable to a witness summoned to provide evidence in a criminal case in a court of law applies in relation to the questioning of a person appearing before the Panel, which is provided for in section 16 (5) of the Act.
- (h) The Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons who have been called to provide evidence, subject to section 16 (6) of the Act, are entitled to the assistance of a legal representative of their choice, at their own cost, who shall be given reasonable access to peruse all documents held or received by the Panel in relation to the Investigations Hearing, provided that, pursuant to section 16 (11) of the Act, no person may disclose to any other person the contents of any document in the possession of a Commissioner or a member of staff or the record of evidence given before the Panel during an Investigations Hearing, unless the Chairperson of the Panel determines otherwise.
- (i) The Complainant, the Respondent and any other person who appears to be implicated in the matter connected with the Investigations Hearing

shall, pursuant to section 16 (7) of the Act, be entitled to pose, through the Chairperson of the Panel, a question to any person appearing before the Panel.

- (j) Where the Complainant establishes a *prima facie* case, the burden of proving that there has not been a violation of a human right, where the Respondent is the State, shall be on the State, where the State shall be required to produce clear and convincing evidence to satisfy the burden.
- (k) The Panel shall not be bound by the rules of evidence, except for those encoded in section 16 (5) of the Act.
- (l) The Panel may receive evidence in any manner it deems justifiable and necessary, including through electronic means. In the case of children and vulnerable persons, the Chairperson of the Panel may direct for special provisions to be made.
- (m) Should the Panel accept any article or document at the Investigations Hearing, it may retain any such article or document for a reasonable period and it shall inform the person(s) providing any such article or document of the same.
- (n) The Investigations Hearing proceedings shall be properly recorded and typed.
- (o) The Investigations Hearing shall be open to the public and the findings of the Panel shall be made public on the Commission's website, unless the Chairperson of the Panel decides that the proceedings shall be held, in part or in full, *in camera* and the publication of the findings may be restricted in accordance with section 16 (10) of the Act.



- (i) Before the Panel makes a direction on taking evidence *in camera*, the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing are entitled to a reasonable opportunity to address the Panel in respect of evidence to be taken *in camera*.
- (ii) The Panel may make directions in respect to the disclosure of evidence taken *in camera* and, specifically, when the evidence involves a child or a vulnerable person, the Panel may, to protect the identity of the person, direct for the name of the child or vulnerable person to be omitted and a pseudonym to be used in its place.
- (p) The Chairperson of the Investigations Hearing may adjourn the Investigations Hearing for any reason they see fit.
- (q) The Chairperson of the Panel may issue any direction that they deem to be justifiable and necessary to ensure the proper functioning of the Investigations Hearing, which includes any steps required to ascertain the truth and correctness of any evidence produced, and issue any such warnings, in accordance with section 23 of the Act, including but not limited to persons, as per subsections (c) and (d), who:

  - (i) Willfully interrupt proceedings at an Investigations Hearing or misbehave themselves in any manner in the place where such an Investigations Hearing is being held; and/or
  - (ii) Conduct themselves in a manner at an Investigations Hearing, which, if such investigation were proceedings in a court of law, would have constituted contempt of court.

### *Procedure at the Investigations Hearings*

**8.8** Before commencing the Investigations Hearing the Chairperson of the Panel shall ascertain whether service has been executed on the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing. If service has not been properly executed on the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing, the Chairperson of the Panel shall adjourn the Investigations Hearing to ensure proper service on the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing. Should either the Complainant or the Respondent fail to appear before the Panel after being properly served notice of the Investigations Hearing, the Chairperson of the Panel may direct for the Investigations Hearing to be adjourned or to continue in the absence of the person who has failed to appear.

**8.9** After ascertaining the appearance of the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing, the Chairperson of the Panel shall explain:

- (a) The entitlement of the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing to the assistance of a legal representative, at their own cost.
- (b) The purpose of the Investigations Hearing.

- (c) The inquisitorial and formal nature of the Investigations Hearing.
- (d) The formal procedures that will be followed at the Investigations Hearing.
- (e) That any person questioned under paragraph 8.7 (d) (i) of these Procedures, and in accordance with section 16 (2) (i) of the Act, shall be competent and compelled to answer all questions put to them about any fact or matter connected with the Investigations Hearing notwithstanding that the answer may incriminate them. Subject to the aforementioned, the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law applies in relation to the questioning of a person appearing before the Panel, as set out in section 16 (5) of the Act.
- (f) That any person required to produce an article or a document under paragraph 8.7 (e) (i) of these Procedures, and pursuant to section 16 (2) (ii) of the Act, shall be compelled to produce such article or document in their possession or custody or under their control, which may be necessary in connection with the Investigations Hearing.
- (g) That any incriminating answer and/or information obtained, or incriminating evidence derived either directly or indirectly from a questioning at the Investigations Hearing, is not admissible, in accordance with section 16 (4) of the Act, as evidence against the person concerned in criminal proceedings in a court of law or before anybody or institution established by or under any written law, except in criminal proceedings where the person is

charged with the offence of perjury or with an offence under section 23 (b) of the Act.

- (h) After the aforementioned explanation, the Panel will then ask the Respondent or any person who appears to be implicated in the matter connected with the Investigations Hearing whether they have a list of agreed facts.
- (i) Once the Panel has ascertained whether there are any agreed facts, the Panel shall then provide a summary of the complaint and the ToR for the Investigations Hearing.
- (j) The Panel will then proceed to call persons to provide evidence in the following order:

  - (i) The Complainant;
  - (ii) The Respondent;
  - (iii) Any other person who appears to be implicated in the matter connected with the Investigations Hearing; and
  - (iv) Any person(s) required to produce evidence before the Panel.

- Provided that the Chairperson of the Panel may deviate from the aforementioned order, where the Chairperson deems it justifiable and necessary.
- (k) Once the Panel has received all the evidence, the Complainant, the Respondent or any person that appears to be implicated in the matter connected with the Investigations Hearing shall be provided an opportunity to make any closing submissions, either orally or in writing.

- (l) Once the Panel has received any closing submissions from the Complainant, the Respondent or any person that appears to be implicated in the matter connected with the Investigations Hearing, the Chairperson of the Panel shall proceed to adjourn the Investigations Hearing for the Panel to determine its findings.

*Findings of the Investigations Panel*

**8.10** The findings shall be determined by a 2/3 majority vote of the Panel. Where there shall be a dissenting finding, the Panel member in dissent shall draft a separate finding.

**8.11** The Panel shall set out in its findings the following particulars:

- (a) A summary of the evidence and information;
- (b) The human rights issue;
- (c) The relevant law relating to the human rights issue;
- (d) An analysis of the law, evidence and information;
- (e) Any findings in respect to the complaint, providing reasons;
- (f) Any recommendation(s) and/or remedial action(s) proposed; and
- (g) A notice providing information concerning the right to judicial review, should the Complainant, the Respondent or any person that appeared to be implicated in the matter connected with the Investigations Hearing be aggrieved by the findings, and the time limits of such review.

**8.12** The Panel shall reduce its findings to writing and, on the day, adjourn for the purposes of delivering the findings of the Panel. The Panel shall deliver a summary of their findings, and any recommendation(s) and/or remedial action(s) proposed. The Panel shall deliver their findings within thirty (30) days of the conclusion of the Investigations Hearing, unless adjourned by the Chairperson of the Panel for a different date, provided that the Chairperson of the Panel provides justifiable reasons for the adjournment.

**8.13** In the event that the Respondent does not agree with the findings and recommendation(s) and/or remedial action(s) proposed by the Panel in its findings, or the Respondent does not agree to give effect to the same within sixty (60) days of becoming aware of such recommendation(s) and/or remedial action(s), unless the Chairperson of the Panel determines a different time period, the Commission, pursuant to section 14 (4) (b) of the Act, may initiate proceedings in a competent court or tribunal in its own name to seek enforcement of the findings and recommendation(s) and/or remedial action(s).

**8.14** A copy of the full findings shall be made available to the Complainant, the Respondent, any other person who appears to be implicated in the matter connected with the Investigations Hearing and all persons called to provide evidence at the Investigations Hearing.

**8.15** The findings of the Panel shall be final and not subject to an appeal.

*Provision of Report on Findings*

**8.16** The Chairperson of the Panel shall put a report of the full findings, including the majority and dissenting findings, before the Commission and the full findings, including the majority and dissenting findings, shall be made public on the website of the Commission, unless the Chairperson of the Panel has directed for the full findings to be restricted in accordance with paragraph 8.7 (o) of these Procedures.

**8.17** A hard copy of the full findings, including the majority and dissenting findings, shall be made available at the registry of the Commission, unless the Chairperson of the Panel has directed for the findings to be restricted in accordance with paragraph 8.7 (o) of these Procedures.

## **9. CONCLUDING COMPLAINTS**

**9.1** A complaint may be concluded and the file closed in the following ways:

- (a)** Where the Commission decides that the complaint does not meet the admissibility criteria or there is an appropriate forum for the complaint and the Complainant has been informed of such;
  - Provided that, where a Complainant completes the procedures of the appropriate forum and believes such forum does not meet the required human rights standards, the Complainant can return to the Commission and have their complaint reopened.
- (b)** Where the Commission decides, based on information it has received, that the complaint does not warrant further investigation;
- (c)** Where ADR has been successful;
- (d)** Where an investigation has been completed and an Investigations and Analysis Report has been issued;
- (e)** Where the Complainant wishes to withdraw their complaint;
- (f)** Where the matter has been heard and settled through an Investigations Hearing; or
- (g)** If legal proceedings are instituted, at the completion of the respective proceedings.

**9.2** When a complaint has been concluded, the Complainant will be notified in writing, including the reasons for such conclusion.

## 10. INSTITUTING LEGAL PROCEEDINGS

**10.1** Where the Respondent has failed to implement the findings under any report issued to them, without satisfactory reasons for such failure, and where the Commission has expressly stated in its findings that it may institute legal proceedings in the event of such failure, the Commission may decide to institute the same in accordance with section 14 (4) (b) of the Act, which states that the Commission is competent *to initiate proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons, including proceedings relating to the constitutionality of a law or the provisions of a law.*



## 11. INVESTIGATIONS APPEALS

**11.1** Should the Complainant be aggrieved by a decision made under subsections 5.6 of these Procedures, the Complainant may, within thirty (30) days of the said decision, appeal to the Investigations Appeals Commissioner. The Complainant may appeal outside of this time limit with leave of the Commission, provided that they offer justifiable reasons.

**11.2** To initiate an appeal, the Complainant shall populate Form 3 of these Procedures (Appeals Form) and submit it to the Commission either by:

- (a) Delivering a physical copy of the form at the Commission's office;
- (b) Sending it electronically to the Registrar of Complaints at [registrar@seychelleshumanrights.com](mailto:registrar@seychelleshumanrights.com); or
- (c) Posting it in a confidential envelope to the Commission's address at 1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

**11.3** The Investigations Appeals Commissioner shall, within thirty (30) days of receiving the appeal, make their determination in respect of the same in writing, which shall be communicated to the Complainant. Should the Investigations Appeals Commissioner be unable to make their determination within the above time frame, the Investigations Appeals Commissioner shall inform the Complainant, in writing, and provide the Complainant with a new date for their determination, provided that the Investigations Appeals Commissioner offers full reasons for the delay.

**11.4** Once the Investigations Appeals Commissioner receives the appeal, they may:

- (a) Dismiss the appeal; or
- (b) Uphold the appeal;
  - Provided that the Investigations Appeals Commissioner shall give full reasons for their determination.

**11.5** Where the Investigations Appeals Commissioner upholds the appeal, they may:

- (a) Direct that the complaint be investigated;
  - (b) Direct that the investigation be continued;
  - (c) Direct that the complaint be referred for ADR;
  - (d) Direct that the complaint be referred to an Investigations Hearing; or
  - (e) Issue any other directions that they may deem necessary to give effect to these Procedures.
- Provided that the Investigations Appeals Commissioner shall give full reasons for their direction.

## 12. FORMS

### a) Form 1

Dreamgate Complex, Ile Du Port  
P.O. Box 1423, Victoria, Mahe  
Republic of Seychelles



Tel: 248 4 303 220  
Email: [info@seychelleshumanrights.com](mailto:info@seychelleshumanrights.com)  
[www.seychelleshumanrightscommission.com](http://www.seychelleshumanrightscommission.com)

## ENQUIRIES FORM

**Note:** The form may be filled in English, French or Creole and shall be forwarded to the Seychelles Human Rights Commission, 1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

### A) CONTACT AND REFERENCE INFORMATION

<b>Full Name:</b>	<b>Local Address:</b>
<b>Date of Birth:</b>	<b>Country of Residence:</b>
<b>Telephone of contact persons:</b>	<b>Email address:</b>
<b>Nationality:</b>	<b>National Identity No./Passport No.:</b>
<b>Spoken Language:</b>	<b>Sex (statistical purposes only):</b>
<b>Do you require an interpreter? Yes/No</b>	<b>Gender Identity (statistical purposes only):</b>

### B) COMPLAINT HISTORY OUTSIDE SHRC

Please specify if this complaint has already been submitted to any other institution or body, e.g.

- Ombudsman
- Judiciary
- Truth and Reconciliation Commission
- Employment Tribunal
- Anti-corruption Commission
- Police/Internal Affairs

Other (please specify): .....

**C) THE COMPLAINT**

**Brief description of the complaint:**

Signature of Complainant.....

Date.....

**FOR OFFICIAL USE**

**Information provided by the Commission to the Complainant:**

**ENQUIRY NUMBER:**.....  
**NAME OF STAFF MEMBER:** .....  
**DATE RECEIVED BY STAFF MEMBER:** .....  
**DATE INFORMATION PROVIDED BY STAFF MEMBER:**.....  
**SIGNATURE OF STAFF MEMBER:** .....

## b) Form 2

Dreamgate Complex, Ile Du Port  
P.O. Box 1423, Victoria, Mahe  
Republic of Seychelles



Tel: 248 4 303 220

Email: [info@seychelleshumanrights.com](mailto:info@seychelleshumanrights.com)

[www.seychelleshumanrightscommission.com](http://www.seychelleshumanrightscommission.com)

## COMPLAINTS FORM

**Note:** The form may be filled in English, French or Creole and shall be forwarded to the Seychelles Human Rights Commission, 1<sup>st</sup> Floor, Ile du Port, Dreamgate Complex, Mahé.

### A) CONTACT AND REFERENCE INFORMATION

<b>Full Name:</b>	<b>Local Address:</b>
<b>Date of Birth:</b>	<b>Country of Residence:</b>
<b>Telephone of contact persons:</b>	<b>Email address:</b>
<b>Nationality:</b>	<b>National Identity No./Passport No.:</b>
<b>Spoken Language:</b>	<b>Sex (statistical purposes only):</b>
<b>Do you require an interpreter? Yes/No</b>	<b>Gender Identity (statistical purposes only):</b>

### B) THE COMPLAINT

<p><b>Full details of the alleged human rights violation, including but not limited to:</b></p> <p><i>a) Details of the time and place of the alleged human rights violation.</i></p>
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*b) Details of who was involved in the alleged human right violation.*

*c) Details of what occurred to cause the alleged human rights violation.*

*d) Details of any documentation the complainant may have concerning the alleged human rights violation.*

*e) Details of the persons who may have witnessed the alleged human rights violation.*

*f) Details as to what steps the complainant has taken to seek redress for the alleged human rights violation.*

*g) Details of the type of redress the complainant is seeking.*

I, the undersigned, consent to the information provided to the Commission to be disclosed to other persons as part of any investigation and in the process of securing any possible redress.

.....

Signature

.....

Date

I, the undersigned, do not consent to have the information disclosed for the following reasons:

..... Signature	..... Date
--------------------	---------------

I, the undersigned, acknowledge and understand that, by not consenting for the information to be disclosed, this may lead to the Commission not undertaking alternative dispute resolution (ADR) or commencing an investigation.

..... Signature	..... Date
--------------------	---------------

I, the undersigned, agree to engage in any ADR, which may include negotiations, mediation or conciliation proposed by the Commission. Further, I, the undersigned, consent to the Commission meeting with the Respondent(s) to discuss the matter and to ascertain the possibility and/or suitability of ADR. I, the undersigned, acknowledge that the Commission may, where it sees it necessary to do so, endeavour to resolve the dispute or rectify any act or omission emanating from or constituting a violation or a threat to any human right by ADR and consent to the process.

..... Signature	..... Date
--------------------	---------------

I, the undersigned, do not agree to engage in any ADR, which may include negotiations, mediation or conciliation proposed by the Commission for the following reasons:



..... Signature	..... Date
--------------------	---------------

I, the undersigned, acknowledge and understand that by not consenting to participate in ADR, this may lead to the Commission not commencing an investigation.

..... Signature	..... Date
--------------------	---------------

I, the undersigned, consent to my full name being included in any media article published by the Commission.

..... Signature	..... Date
--------------------	---------------

I, the undersigned, do not consent to my name being included in any media article published by the Commission for the following reasons:

..... Signature	..... Date
--------------------	---------------

I, the undersigned, acknowledge and understand that withholding my consent in the above applies only to media articles published by the Commission and not the publication of Investigations and Analysis Reports, unless directed otherwise by the Chairperson of the Investigations Panel, should the complaint be referred to an Investigations Hearing.

..... Signature	..... Date
--------------------	---------------

I, the undersigned, acknowledge and understand:

- (a) The Complaints Handling and Investigations Procedures.
- (b) That the Commission is an independent truth-seeking institution and is not my legal advocate during the complaints process.

..... Signature	..... Date
--------------------	---------------

I, the undersigned, confirm the above information provided by me in this Complaints Form is true and correct to the best of my knowledge and belief.

..... Signature	..... Date
--------------------	---------------

**FOR OFFICAL USE**

<b>COMPLAINT NUMBER:</b> .....
<b>NAME OF STAFF MEMBER:</b> .....
<b>DATE RECEIVED BY STAFF MEMBER:</b> .....
<b>SIGNATURE OF STAFF MEMBER:</b> .....



**C) REASONS FOR APPEAL**

Details of the reasons why you disagree with the decision being appealed:

**D) IF APPEALING OUTSIDE APPEAL PERIOD**

Details of reasons for appealing outside the appeal period, incl. any supporting documents:

**E) SUPPORTING DOCUMENTS FOR APPEAL**

Details of the documents being provided to support your appeal, incl. documents received from the Commission:

Signature of Complainant/Appellant.....

Date.....

**FOR OFFICIAL USE**

<p><b>NAME OF STAFF MEMBER:</b> .....</p> <p><b>DATE RECEIVED BY STAFF MEMBER:</b> .....</p> <p><b>SIGNATURE OF STAFF MEMBER:</b> .....</p>
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## **APPENDIX IV**

### **Principles relating to the Status of National Institutions (The Paris Principles)**

Adopted by General Assembly resolution 48/134 of 20 December 1993

#### **Competence and responsibilities**

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
  - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
  - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
  - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and

protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

#### **Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.



## APPENDIX III

### Seychelles Charter of Fundamental Rights and Freedoms CONSTITUTION OF THE REPUBLIC OF SEYCHELLES [21st June, 1993]

#### **Right to life**

15. (1) Everyone has a right to life and no one shall be deprived of life intentionally.
- (2) A law shall not provide for a sentence of death to be imposed by any court.
- (3) Clause (1) is not infringed if there is a loss of life-
- (a) by any act or omission which is made not punishable by any law reasonably justifiable in a democratic society; or
- (b) as a result of a lawful act of war.

#### **Right to dignity**

16. Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.

#### **Freedom from slavery and forced or compulsory labour**

17. (1) Every person has a right not to be held in slavery or bondage.
- (2) Every person has a right not to be compelled to perform forced or compulsory labour.
- (3) Labour forced or compelled to be performed pursuant to a law necessary in a democratic society does not infringe clause (2).

#### **Right to liberty**

18. (1) Every person has a right to liberty and security of the person.
- (2) The restriction, in accordance with fair procedures established by law, of the right under clause (1) in the following cases shall not be treated as an infringement of clause (1)-
- (a) the arrest or detention in execution of a sentence or other lawful order of a court;
- (b) the arrest or detention on reasonable suspicion of having committed or of being about to commit an offence for the purposes of investigation or preventing the commission of the offence and of producing, if necessary, the offender before a competent court;
- (c) the arrest or detention to prevent the spread of infectious or contagious diseases which constitute a serious threat to public health;
- (d) the arrest or detention for the treatment and rehabilitation of a person who is, or reasonably suspected to be, of unsound mind or addicted to drugs to prevent harm to that person or to the community;
- (e) the arrest or detention for the purpose of preventing the unauthorised entry into Seychelles of a person, not being a citizen of Seychelles, or for the purpose of deportation or extradition of that person;
- (f) the detention for the rehabilitation and welfare of a minor with the consent of the parent or guardian or of the Attorney General where such detention is ordered by a competent court.
- (3) A person who is arrested or detained has a right to be informed at the time of the 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, a right to remain silent, a right to be defended by a legal practitioner of the person's choice and, in the case of a minor, a right to communicate with the parent or guardian.
- (4) A person who is arrested or detained shall be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter of the rights under clause (3).
- (5) A person who is arrested or detained, if not released, shall be produced before a court within twenty-four hours of the arrest or detention or, having regard to the distance from the place of arrest or detention to the nearest court or the non-availability of a judge or magistrate, or force majeure, as soon as is reasonably practicable after the arrest or detention.
- (6) A person charged with an offence has a right to be tried within a reasonable time.
- (7) A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise-
- (a) where the court is a magistrates' court, the offence is one of treason or murder;
- (b) the seriousness of the offence;

- (c) there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;
- (d) there is a necessity to keep the suspect in custody for the suspect's protection or where the suspect is a minor, for the minor's own welfare;
- (e) the suspect is serving a custodial sentence;
- (f) the suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence.
- (8) A person who is detained has the right to take proceedings before the Supreme Court in order that the Court may decide on the lawfulness of the detention and order the release of the person if the detention is not lawful.
- (9) Proceedings under clause (8) shall be dealt with as a matter of urgency by the Supreme Court and shall take priority over the proceedings of the Court listed for hearing on that day.
- (10) 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.
- (11) A person who has not been convicted of an offence, if kept or confined in a prison or place of detention, shall not be treated as a convicted person and shall be kept away from any convicted person.
- (12) An offender or a suspect who is a minor and who is kept in lawful custody or detention shall be kept separately from any adult offender or suspect.
- (13) A female offender or suspect who is kept in lawful custody or detention shall be kept separately from any male offender or suspect.
- (14) Where a person is convicted of any offence, any period which the person has spent in custody in respect of the offence shall be taken into account by the court in imposing any sentence of imprisonment for the offence.
- (15) A person shall not be imprisoned merely on the ground of the inability to fulfil a contractual obligation.
- (16) Clause (15) shall not limit the powers of a court under any law in enforcing its orders.

#### **Right to a fair and public hearing**

19. (1) Every person charged with an offence has the right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.
- (2) Every person who is charged with an offence-
- (a) is innocent until the person is proved or has pleaded guilty;
  - (b) shall be informed at the time the person is charged or as soon as is reasonably practicable, in, as far as is practicable, a language that the person understands and in detail, of the nature of the offence;
  - (c) shall be given adequate time and facilities to prepare a defence to the charge;
  - (d) has a right to be defended before the court in person, or, at the person's own expense by a legal practitioner of the person's own choice, or, where a law so provides, by a legal practitioner provided at public expense;
  - (e) has a right to examine, in person or by a legal practitioner, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on the person's behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
  - (f) shall, as far as is practicable, have without payment the assistance of an interpreter if the person cannot understand the language used at the trial of the charge;
  - (g) shall not be compelled to testify at the trial or confess guilt;
  - (h) shall not have any adverse inference drawn from the exercise of the right to silence either during the course of the investigation or at the trial; and
  - (i) shall, except with the person's own consent, not be tried in the person's absence unless the person's conduct renders the continuance of the proceedings in the person's presence impracticable and the court has ordered the person to be removed and the trial to proceed in the person's absence.
- (3) When a person is tried for any offence that person or any other person authorised by that person in that behalf shall, if either of them so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given as soon as is practicable after judgment a copy for the use of that person of any record of the proceedings made by or on behalf of the court.
- (4) Except for the offence of genocide or an offence against humanity, a person shall not be held to be guilty of an offence on account of any act or omission that did not, at the time it took place, constitute an offence, and a penalty shall not be imposed for any offence that is more severe in degree or description than the maximum penalty that might have been imposed for the offence at the time when it was committed.

(5) A person who shows that the person has been tried by a competent court for an offence and either convicted or acquitted shall not be tried again for that offence or for any other offence of which the person could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) A person shall not be tried for an offence if the person shows that the person has been pardoned for that offence in accordance with an Act made pursuant to article 60(2).

(7) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(8) Subject to clause (9), all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(9) Anything in clause (8) shall not prevent the court or other authority from excluding from the proceedings, except for the announcement of the decision of the court or other authority, persons other than the parties thereto, their legal representatives and legal practitioners to such extent as the court or other authority-

(a) may by law be empowered so to do and may consider necessary in the circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the privacy of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(10) Anything contained in or done under the authority of any law necessary in a democratic society shall not be held to be inconsistent with or in contravention of -

(a) clause (1), (2)(e) or (8), to the extent that the law in question makes necessary provision relating to the grounds of privilege or public policy on which evidence shall not be disclosed or witnesses are not competent or cannot be compelled to give evidence in any proceedings;

(b) clause (2)(a), to the extent that the law in question imposes upon any person charged with an offence the burden of proving particular facts or declares that the proof of certain facts shall be prima facie proof of the offence or of any element thereof;

(c) clause (2)(e), to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) clause (5), to the extent that the law in question authorises a court to try a member of a disciplinary force for an offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting the member shall in sentencing the person to any punishment take into account any punishment awarded the member under that disciplinary law.

(11) Every person convicted of an offence shall be entitled to appeal in accordance with law against the conviction, sentence and any order made on the conviction.

(12) For the purposes of clause 2(i), a person who has, in accordance with law, been served with a summons or other process requiring the person to appear at the time and place appointed for the trial and who does not so appear shall be deemed to have consented to the trial taking place in the person's absence.

(13) Every person convicted of an offence and who has suffered punishment as a result of the conviction shall, if it is subsequently shown that there has been a serious miscarriage of justice, be entitled to be compensated by the State according to law.

### **Right to privacy**

20. (1) Every person has a right not to be subjected -

(a) without the consent of that person, to the search of the person or property or premises of that person or to the unlawful entry by others on the premises of that person;

(b) without the consent of the person or an order of the Supreme Court, to the interception of the correspondence or other means of communication of that person either written, oral or through any medium.

(2) Anything contained in or done under the authority of any law shall not be held to be inconsistent with or in contravention of clause (1)(a) to the extent that the law in question makes provision-

(a) that is reasonably required in the interest of defence, public safety, public order, public morality, public health, the administration of Government, town and country planning, nature conservation and the economic development and well-being of the country;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Government or a local authority, or a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect or value those premises or anything therein for the purpose of any tax, rate, due or duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing of the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order. except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be necessary in a democratic society.

#### **Freedom of conscience**

21. (1) Every person has a right to freedom of conscience and for the purpose of this article this right includes freedom of thought and religion, freedom to change religion or belief and freedom either alone or in community with others and both in public and in private, to manifest and propagate the religion or belief in worship, teaching, practice and observance.

(2) The freedom to manifest and propagate a religion or belief may be subject to such limitations as may be prescribed by a law and necessary in a democratic society-

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights or freedoms of other persons.

(3) A person attending any place of education shall not be compelled to impart or receive religious instruction or to take part in or attend any religious ceremony or observance.

(4) Subject to this Constitution or any other law, a person shall not be compelled to take any oath that is contrary to the religion or belief of that person or to take any oath in a manner that is contrary to that religion or belief.

(5) A person shall not be required to profess any religion as a qualification for public office.

(6) A law shall not make provision for the establishment of any religion or the imposition of any religious observance.

(7) Anything in this article shall not preclude any religious community or denomination from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

#### **Freedom of expression**

22. (1) Every person has a right to freedom of expression and for the purpose of this article this right includes the freedom to hold opinions and to seek, receive and impart ideas and information without interference.

(2) The right under clause (1) may be subject to such restrictions as may be prescribed by a law and necessary in a democratic society-

(a) in the interest of defence, public safety, public order, public morality or public health;

(b) for protecting the reputation, rights and freedoms or private lives of persons;

(c) for preventing the disclosure of information received in confidence;

(d) for maintaining the authority and independence of the courts or the National Assembly;

(e) for regulating the technical administration, technical operation, or general efficiency of telephones, telegraphy, posts, wireless broadcasting, television, or other means of communication or regulating public exhibitions or public entertainment; or

(f) for the imposition of restrictions upon public officers.

#### **Right of assembly and association**

23. (1) Every person has a right to freedom of peaceful assembly and association and for the purpose of this article this right includes the right to assemble freely and associate with other persons and in particular to form or to belong to political parties, trade unions or other associations for the protection of the interests of that person and not to be compelled to belong to any association.

(2) The right under clause (1) may be subject to such restrictions as may be prescribed by a law and necessary in a democratic society-

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) in respect of the registration of associations or political parties;

(c) for the protection of the rights and freedoms of other persons,

(d) for imposition of restrictions-

(i) on persons who are not citizens of Seychelles; or

(ii) on public officers or members of the disciplinary forces.

#### **Right to participate in Government**

24. (1) Subject to this Constitution, every citizen of Seychelles who has attained the age of eighteen years has a right-

(a) to take part in the conduct of public affairs either directly or through freely chosen representatives;

- (b) to be registered as a voter for the purpose of and to vote by secret ballot at public elections which shall be by universal and equal suffrage;
  - (c) to be elected to public office; and
  - (d) to participate, on general terms of equality, in public service.
- (2) The exercise of the rights under clause (1) may be regulated by a law necessary in a democratic society.

### **Freedom of movement**

25. (1) Every person lawfully present in Seychelles has a right of freedom of movement and for the purpose of this article this right includes the right to move freely within Seychelles, the right to reside in any part of Seychelles, the right to leave Seychelles and the right not to be expelled from Seychelles.
- (2) Every person who is a citizen of Seychelles has a right to enter Seychelles and, subject to clause (3)(d), not to be expelled from Seychelles.
- (3) The right under clause (1) may be subject to such restrictions as are prescribed by a law necessary in a democratic society -
- (a) in the interests of defence, public safety, public order, public morality or public health;
  - (b) for protecting the rights and freedoms of other persons;
  - (c) for the prevention of a crime or compliance with an order of a court;
  - (d) for extradition of persons from Seychelles; or
  - (e) for lawful removal of persons who are not citizens of Seychelles from Seychelles.
- (4) A law providing for the extradition of persons from Seychelles shall not authorise the extradition to a country in respect of an offence punishable with death in that country unless that country undertakes not to carry into effect a sentence of death in respect of the offence.
- (5) A law providing for the lawful removal from Seychelles of persons lawfully present in Seychelles shall provide for the submission, prior to removal, of the reasons for the removal and for review by a competent authority of the order of removal.

### **Right to property**

26. (1) Every person has a right to property and for the purpose of this article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others.
- (2) The exercise of the right under clause (1) may be subject to such limitations as may be prescribed by law and necessary in a democratic society-
- (a) in the public interest;
  - (b) for the enforcement of an order or judgment of a court in civil or criminal proceedings;
  - (c) in satisfaction of any penalty, tax, rate, duty or due;
  - (d) in the case of property reasonably suspected of being acquired by the proceeds of drug trafficking or serious crime;
  - (e) in respect of animals found trespassing or straying;
  - (f) in consequence of a law with respect to limitation of actions or acquisitive prescription;
  - (g) with respect to property of citizens of a country at war with Seychelles;
  - (h) with regard to the administration of the property of persons adjudged bankrupt or of persons who have died or of persons under legal incapacity; or
  - (i) for vesting in the Republic of the ownership of underground water or unextracted oil or minerals of any kind or description.
- (3) A law shall not provide for the compulsory acquisition or taking of possession of any property by the State unless-
- (a) reasonable notice of the intention to compulsorily acquire or take possession of the property and of the purpose of the intended acquisition or taking of possession are given to persons having an interest or right over the property;
  - (b) the compulsory acquisition or taking of possession is necessary in the public interest for the development or utilisation of the property to promote public welfare or benefit or for public defence, safety, order, morality or health or for town and country planning;
  - (c) there is reasonable justification for causing any hardship that may result to any person who has an interest in or over the property;
  - (d) the State pays prompt and full compensation for the property;
  - (e) any person who has an interest or right over the property has a right of access to the Supreme Court whether direct or on appeal from any other authority for the determination of the interest or right, the legality of the acquisition or taking of possession of the property, the amount of compensation payable to the person and for the purpose of obtaining prompt payment of compensation.
- (4) Where the property acquired by the State under this article is not used, within a reasonable time, for the purpose for which it was acquired, the State shall give, to the person who owned it immediately before the acquisition of the property, an option to buy the property.

(5) A law imposing any restriction on the acquisition or disposal of property by a person who is not a citizen of Seychelles shall not be held to be inconsistent with clause (1).

#### **Right to equal protection of the law**

27. (1) Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.

(2) Clause (1) shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups.

#### **Right of access to official information**

28. (1) The State recognises the right of access of every person to information relating to that person and held by a public authority which is performing a governmental function and the right to have the information rectified or otherwise amended, if inaccurate.

(2) The right of access to information contained in clause (1) shall be subject to such limitations and procedures as may be prescribed by law and are necessary in a democratic society including-

(a) for the protection of national security;

(b) for the prevention and detection of crime and the enforcement of law;

(c) for the compliance with an order of a court or in accordance with a legal privilege;

(d) for the protection of the privacy or rights or freedoms of others;

(3) The State undertakes to take appropriate measures to ensure that information collected in respect of any person for a particular purpose is used only for that purpose except where a law necessary in a democratic society or an order of a court authorises otherwise.

(4) The State recognises the right of access by the public to information held by a public authority performing a governmental function subject to limitations contained in clause (2) and any law necessary in a democratic society.

#### **Right to health care**

29. (1) The State recognises the right of every citizen to protection of health and to the enjoyment of the attainable standard of physical and mental health and with a view to ensuring the effective exercise of this right the State undertakes -

(a) to take steps to provide for free primary health care in State institutions for all its citizens.

(b) to take appropriate measures to prevent, treat and control epidemic, endemic and other diseases;

(c) to take steps to reduce infant mortality and promote the healthy development of the child;

(d) to promote individual responsibility in health matters;

(e) to allow, subject to such supervision and conditions as are necessary in a democratic society, for the establishment of private medical services.

#### **Right of working mothers**

30. The State recognises the unique status and natural maternal functions of women in society and undertakes as a result to take appropriate measures to ensure that a working mother is afforded special protection with regard to paid leave and her conditions at work during such reasonable period as provided by law before and after childbirth.

#### **Right of minors**

31. The State recognises the right of children and young persons to special protection in view of their immaturity and vulnerability and to ensure effective exercise of this right the State undertakes -

(a) to provide that the minimum age of admission to employment shall be fifteen years, subject to exceptions for children who are employed part-time in light work prescribed by law without harm to their health, morals or education;

(b) to provide for a higher minimum age of admission to employment with respect to occupations prescribed by law which the State regards as dangerous, unhealthy or likely to impair the normal development of a child or young person;

(c) to ensure special protection against social and economic exploitation and physical and moral dangers to which children and young persons are exposed;

(d) to ensure, save in exceptional and judicially recognised circumstances, that a child of young age is not separated from his parents.

#### **Protection of families**

32. (1) The State recognises that the family is the natural and fundamental element of society and the right of everyone to form a family and undertakes to promote the legal, economic and social protection of the family.

(2) The right contained in clause (1) may be subject to such restrictions as may be prescribed by law and necessary in a democratic society including the prevention of marriage between persons of the same sex or persons within certain family degrees.

#### **Right to Education**

33. The State recognises the right of every citizen to education and with a view to ensuring the effective realisation of this right undertakes -

(a) to provide compulsory education, which shall be free in State schools, for such minimum period, which shall not be less than ten years, as may be prescribed by law;

(b) to ensure that the educational programs in all schools are aimed at the complete development of the person;

(c) to afford, on the basis of intellectual capability, every citizen equal access to educational opportunities and facilities beyond the period of compulsory education;

(d) to allow, subject to such reasonable restrictions, supervision and conditions as are necessary in a democratic society, any person, organisation or institution to establish and maintain a private school;

(e) to respect the right of parents to choose whether to send their children to a State or private school.

#### **Right to shelter**

34. The State recognises the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the co-operation of public or private organisations to facilitate the effective realisation of this right.

#### **Right to work**

35. The State recognises the right of every citizen to work and to just and favourable conditions of work and with a view to ensuring the effective exercise of these rights the State undertakes-

(a) to take necessary measures to achieve and maintain a high and stable level of employment, as is practicable, with a view to attaining full employment;

(b) subject to such restrictions as are necessary in a democratic society, to protect effectively the right of a citizen to earn a dignified living in a freely chosen occupation, profession or trade;

(c) to promote vocational guidance and training;

(d) to make and enforce statutory provisions for safe, healthy and fair conditions of work, including reasonable rest, leisure, paid holidays, remuneration which guarantees, as a minimum, dignified and decent living conditions for the workers and their families, fair and equal wages for work of equal value without distinction and stability of employment;

(e) to promote machinery for voluntary negotiations between employers and workers or their organisations with a view to the regulation of conditions of employment by means of collective agreements;

(f) to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitrations for the settlement of labour disputes;

(g) subject to such restrictions as are necessary in a democratic society, and necessary for safeguarding public order, for the protection of health or morals and the rights and freedoms of others, to ensure the right of workers to organise trade unions and to guarantee the right to strike.

#### **Right of the aged and the disabled**

36. The State recognises the right of the aged and the disabled to special protection and with a view to ensuring the effective exercise of this right undertakes -

(a) to make reasonable provision for improving the quality of life of and for the welfare and maintenance of the aged and disabled;

(b) to promote programs specifically aimed at achieving the greatest possible development of the disabled.

#### **Right to social security**

37. The State recognises the right of every citizen to a decent and dignified existence and with a view to ensuring that its citizens are not left unprovided for by reason of incapacity to work or involuntary unemployment undertakes to maintain a system of social security.

### **Right to safe environment**

38. The State recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment and with a view to ensuring the effective realisation of this right the State undertakes -

- (a) to take measures to promote the protection, preservation and improvement of the environment
- (b) to ensure a sustainable socio-economic development of Seychelles by a judicious use and management of the resources of Seychelles;
- (c) to promote public awareness of the need to protect, preserve and improve the environment.

### **Right to cultural life and values**

39. (1) The State recognises the right of every person to take part in cultural life and to profess, promote, enjoy and protect the cultural and customary values of the Seychellois people subject to such restrictions as may be provided by law and necessary in a democratic society including-

- (a) the protection of public order, public morals and public health;
- (b) the prevention of crime;
- (c) the protection of the rights and freedoms of other persons.

(2) The State undertakes to take reasonable steps to ensure the preservation of the cultural heritage and values of the Seychellois people.

## **PART II - FUNDAMENTAL DUTIES**

Fundamental duties

40. It shall be the duty of every citizen of Seychelles-

- (a) to uphold and defend this Constitution and the law;
- (b) to further the national interest and to foster national unity;
- (c) to work conscientiously in a chosen profession, occupation or trade;
- (d) to contribute towards the well-being of the community;
- (e) to protect, preserve and improve the environment; and
- (f) generally, to strive towards the fulfilment of the aspirations contained in the Preamble of this Constitution.





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