

**Report by the Government
of the
Republic of Seychelles**

to the African Commission on Human and
Peoples Rights.

Pursuant to Article 62 of the

African Charter on Human and Peoples' Rights

1994 - 2004

Table of Contents

	Pages
• General Introduction.....	3
• Part I	
1- Historical Introduction	4
2- Form of Government	6
3- Legal System	9
4- Relationship between the arms of Government	9
• Part II: Annex	11
• Part III	
Human Rights Instruments to which Seychelles is party	11
• Part IV	
Implementation of Human Rights	15
<u>Individuals</u>	
Article 2 of the ACHPR	17
Article 3 of the ACHPR	18
Article 4 of the ACHPR	20
Article 5 of the ACHPR	23
Article 6 of the ACHPR	24
Article 7 of the ACHPR	28
Article 8 of the ACHPR	33
Article 9 of the ACHPR	35
Articles 10 and 11 of the ACHPR	39
Article 12 of the ACHPR	43
Article 13 of the A-CHPR	44
Article 14 of the ACHPR	48
Article 15 of the ACHPR	51
Article 16 of the ACHPR	62
Article 17 of the ACHPR	67
Article 18 of the ACHPR: Women, Child, Aged and disabled	71
Articles 19 – 24: <u>Rights of Peoples</u>	86
• Part V. Duties	
Articles 27-29 of the ACHPR	99

- Part VI. Problems encountered 105
- Part VII. Article 25 of the African Charter 106

General introduction

This work is the result of the endeavor of The Seychelles Ministry of Foreign Affairs and the National Humanitarian Affairs Committee to finally, after some years of silence, accomplish its duty of submitting a report under Article 62 of the "African Charter in Human and Peoples Rights" for the implementation of legislative or other measures taken with a view to giving effect to humans rights and freedoms.

There was some difficulty in organizing the information, which is widely spread. Particularly because the last edition of the Seychelles Laws dates from 1996, and since then, many legal instruments have been derogated or modified, and some new ones have been brought into force.

Thereafter with the aim of reflecting in the report all the relevant legal dispositions, which are in force at the present, research was concluded in all the Official Gazettes that have been published after 1996, and in some cases even before that date.

For the completion of the Report use has been made of the "Guidelines to Periodic Reporting under Article 62 of the African Charter on Human and Peoples Rights". The first four parts of the document follow exactly the format supplied by the "Guidelines" until part 4 (see Table of Content).

Part 4 of the Guidelines requires the implementation by the parties of civil, political, economic, social, cultural, and group rights; which, is a classification that includes all the human rights enshrined by the Charter. Thereafter part IV of the report document, follows the implementation of each one of the Articles of the Charter by the national law.

In the Report a decision has been taken not to include data information or lengthy comments for each right; however, supremacy has been given to the implementation by the Seychelles law of each one of the Articles of the African Charter on Human and Peoples Rights.

Part I

1. Historical introduction

Seychelles, with a population of 81, 117 people and a land area of 453 km² is one of the world's smallest nations, comprising 115 islands uninhabited until fairly recent times. Although known and visited by traders from the Persian Gulf area and East Africa in earlier times, the Seychelles Archipelago first appeared on European maps at the beginning of the sixteenth century after Portuguese explorers sighted the islands during voyages to India.

A French expedition from Mauritius reached the islands in 1742, and after a formal claim to them in 1756 the French planters and their slaves were the first to settle here.

The settlers, who were supposed to plant crops only to provision the garrison and passing French ships, found it more lucrative to exploit the islands' natural resources.

In 1789 the French Revolution began. One year later Settlers decided to form an Assembly and declared independence from Ile de France. This newly found independence was not to last long. Possession of the islands alternated between France and Britain several times during the French Revolution and the Napoleonic wars.

Finally France ceded Seychelles to Britain in 1814 in the Treaty of Paris. Britain administered Seychelles as a dependency of Mauritius, from which they received little attention and few services

In 1835 slavery was abolished by the British Government and a little over 6500 slaves were set free. Political development proceeded very slowly. Seychelles were granted increasing administrative autonomy from Mauritius. In 1888 separate

nominated administrative and executive councils were established for Mauritius and Seychelles. Thus, in 1903, the islands became a crown colony separated from Mauritius. The involvement of Seychellois in their own political affairs began in 1948 after World War II, when Britain granted suffrage to approximately 2,000 adult male property owners.

In 1964 two parties emerged on the political scene: the Seychelles People's United Party (SPUP) and the Democratic Party (DP). Both were determined to improve local conditions and to develop popularly based local politics, but they differed in substantive ways. The SPUP represented a socialist ideology, favoring worker-oriented policies, and pressing for complete independence from Britain and a nonaligned foreign policy whilst the DP took a more laissez-faire capitalist approach and wanted to continue the association with Britain and to allow British and United States bases on the islands.

Continuous and mounting demands for an increased share in running the colony's affairs prompted Britain to enact a series of constitutions for Seychelles, each of which granted important new concessions. The first universal suffrage election took place in 1967 and there was criticism, provoked by the gap between the high percentage of votes obtained by the SPUP and the seats won at the Legislative Council (three on seven). In 1970 Britain set up a ministerial form of government and gave Seychellois the responsibility to administer all but external affairs, internal security, the civil service, and the government's broadcasting service and newspaper. The opening of an international airport on the east coast of Mahé in 1971 improved contact with the outside world. The end of the islands' relative isolation led to expansion of tourism and concomitant booms in foreign capital investment and the domestic construction industry.

Finally, Britain granted the colony complete independence, and on June 29, 1976, the Republic of Seychelles became a sovereign nation.

In 1977, a coup d'état led to the formation of a new government led by the SPUP. In 1978, the SPUP became the Seychelles Peoples Progressive Front (SPPF), and this

was followed in 1979 by the institutionalisation of the one-party state system, based on socialist ideology. A new constitution was adopted in 1979 which provided for a strong executive headed by the president and a legislature of twenty-three elected and two appointed members. The Government proceeded with its program to set minimum wage levels, raise government salaries, improve housing and health facilities, broaden educational opportunities, provide social security coverage, and generate employment in agriculture and fisheries. The socio-economic indicators improved markedly.

In 1991, a resolution was adopted by the SPPF Congress, to liberalise the political system and the Government invited all political stake holders to assist in rewriting the Constitution and to re-establish multiparty politics. A Constitutional Conference was convened, the composition of which was based on support obtained by popular vote. The newly established political parties (7), participated in the process. Members of the public were also invited to provide their input. The first draft of the Constitution failed to receive the required 60% majority in a referendum. The new and current Constitution was approved by 73.9 percent of the voters in a referendum held on June 18, 1993. A specific Charter on Fundamental Human Rights and Freedoms was incorporated into the Constitution. The provisions of the Constitution emphasised the separation of powers between the executive, legislative, and judiciary.. The Presidency was limited to three terms of five years each. The constitution provided for a leader of the opposition to be elected by opposition members in the National Assembly. The first National Assembly consisted of thirty-three members, twenty-two of them elected, and eleven designated by proportional representation.

After the adoption of the Constitution, combined Presidential and National Assembly elections were held in July 1993 and March 1998. Early Presidential elections were held in September 2001 and National Assembly elections in December 2002. In all cases the SPPF won the Presidential elections and the majority of seats in the National Assembly. In the National Assembly elections of 1998 and 2002, the Seychelles National Party, has been the official opposition.

2. Form of Government

The Seychelles form of Government is a “Presidential System” based on the concept of Separation of Powers Doctrine, between the Judiciary, Executive and Legislature. The office of Head of the State, Head of the Government and Commander-in-Chief of the Defence Forces shall hold for a period of five years by a citizen who is not disqualified from registration as a voter under the Constitution (*Articles 50, 51*). The Constitution establishes an articulated system of checks and balances to ensure the good governance.

The Constitution is the Supreme Legal Instrument in Seychelles, which provides for the inalienable protection of Human Rights and Fundamental freedoms. Its Preamble recognises and affirms the principles of harmony, multiracial society and the dignity and equality of all, as the foundation for freedom, justice, welfare, fraternity, peace and unity. The Charter of Fundamental Human Rights and Freedoms forms part of the **Constitution** (*Chapter III*), and it mirrors all of the fundamental precepts of Human Rights enshrined in the many International and Regional Conventions to which Seychelles is party.

These rights are further entrenched into national legislation, including safeguards against the infringement of the Charter. One of these safeguards is the creation of the **Office of the Ombudsman** (*Chapter X*). The Ombudsman is nominated by the Constitutional Appointments Authority (see below) for a period of 7 years (renewable). He is, in the performance of his functions, free of direction or control by any person or authority.

- ***The Executive Power***

The Executive Power is vested in the President (*Chapter IV & V*). A person shall hold office as President for not more than three terms. The Ministries, not less than seven nor more than fourteen, form the Cabinet. The President shall designate and

the National Assembly shall appoint the persons to hold the office of Minister. A person holding the post of Minister is accountable to the President for his or her Ministry's administration and collectively responsible for the Cabinet decisions. The Minister may be removed from office by either the President or by a two-third vote of censure from the National Assembly.

The Attorney-General is appointed by the President from candidates proposed by the Constitutional Appointments Authority, for a period of seven years. He is the principal legal adviser to the Government and is ultimately responsible in the determination of the criminal proceedings. In the exercise of his functions the Attorney-General is not subject to the direction or control of any other person or authority.

- ***The Legislative Power***

The legislative power is vested in the National Assembly independent of the Executive and accountable to the electorates (*Chapter VIII*). The Assembly shall exercise full legislative power, including ultimate oversight of Executive action. Where the President deems that a Bill infringes the Constitution, he may refer the Bill to the Constitutional Court for a decision. The National Assembly is open to public access and media coverage. Equal airtime (media) is guaranteed during Key addresses and electioneering. The electoral system for the National Assembly combines the majority and the proportional methods. Deputies will be partially directly elected by public secret ballot and partially appointed on a proportional representation basis. The Constitution makes provision for an Electoral Commissioner, mandated to oversee the conduct of free and fair elections, maintain electoral roles and supervise election conduct.

- ***The Judicial Power***

The Constitution makes provision for an independent Judiciary vested with judicial powers. The judiciary cannot discriminate on any grounds whatsoever, it is subjected only to the Constitution and the other laws of Seychelles. Legal Aid is provided, as of a right, where a law so provides and at public expense, on the basis of tested need.

The Judiciary consists of:

- ✓ The Court of Appeal;
- ✓ The Supreme Court; and
- ✓ Other subordinate Courts or Tribunals.

The Supreme Court functions as a Constitutional Court in matters related to the application and interpretation of the Constitution.

The Constitution makes provision (*Chapter IX*), for an independent, **Constitutional Appointments Authority**, mandated to select and recommend, to the Executive, appointments of Judges, Offices of the Attorney General, Auditor General, Ombudsman and Electoral Commissioner. The Authority comprises of members nominated by both Opposition and Government. The removal of a Justice of Appeal or Judge from office for inability or misbehaviour shall be the consequence of a Presidential decision, based on a recommendation made by an “ad hoc” Tribunal appointed by the Constitutional Appointments Authority to inquire into the matter (Chapter VII, Cap 143(3)).

3. Legal System

The Seychellois legal system is based on English common law, with influences of the Napoleonic Code (e.g., in tort and contract matters). The three-tiered judicial system consists of magistrates', Supreme Court and the Court of Appeal. The Court of Appeal hears appeals from the Supreme Court in both civil and criminal cases. The Supreme Court has jurisdiction of first instance as well as acting as an appeals court from the magistrates' courts. Criminal cases are heard in magistrates' courts or the Supreme Court depending on the seriousness of the charge. Juries are called only in cases of murder. Normal legal protections are extended to defendants, which includes public trials, the right of the accused to be present during trial, and the right to confront witnesses, to appeal, to qualify for bail, and to be represented by counsel, on a *pro bono* basis if is a person of limited means. Judges and Magistrates from other Commonwealth countries, mostly African or Asian are employed on a contract basis. Under the penal code, a detained person must be brought before a magistrate within twenty four hours.

4. Relationship between the arms of Government.

Under the Constitution the functions of the Police Force of Seychelles and of the Defence Forces of Seychelles are defined as follows:

- ***The Police Force***

The functions of the Police Force of Seychelles includes:

- (a) maintenance of law and order and preservation of internal security of the Country;
- (b) prevention and detection of crime in the Country and over any other area which the Republic has proclaimed its jurisdiction.

The Police, is commanded by a Police Commissioner and includes a regular 500-member unit and a sixty-member Special Support Unit. For operational and

administrative purposes, Seychelles is divided into the Central Police Division, which comprises the capital; North Police Division; South Police Division; and the Praslin/La Digue Division, each of which is commanded by a Superintendent.. Seychelles maintains a total of seventeen police stations in all divisions. The police organization includes Headquarters, Criminal Investigation Department (CID), Special Support Unit (SSU), General duties, and Special Branch. A commandant manages the Police Academy on Mahe. The Academy provides training for Recruits, Cadets, Supervisors and pre promotion courses.

- ***Seychelles People's Defense Forces***

The functions of Seychelles People's Defense Forces includes:

- (a) defence the Country;
- (b) assistance in the fulfillment by the Republic of its international obligations;
- (c) assistance to civil authorities during periods of emergency such as:
 - (i) in a civil disaster;
 - (ii) in the restoration and maintenance of public order and security on being called out by the Commander in Chief..

Prior to 1977, Seychelles had no armed forces. Instead, there was a small police force modeled along British lines. Initially, the Seychelles People's Defence Forces (SPDF), consisted of the Seychelles Peoples Liberation Army (SPLA), a people's navy, and a people's air force. In December 1992, the government amalgamated the Seychelles People's Navy and the Seychelles People's Air Force to form the Seychelles Coast Guard. Each unit commander reports to the Chief of Staff, who is responsible to the Commander-in-chief. The Defence Forces Council, which is chaired by the Chief of Staff, manages the SPDF.

Part II

Annex (refer page 100)

- Cases example from the Constitutional Court of Seychelles
- Constitution of the Republic of Seychelles
- The Penal Code

Part III

Human Rights instruments to which Seychelles is party

Seychelles subscribes fully, to the Universal Declaration on Human Rights and embraces the purposes and principles contained therein. Its adoption, although is itself not an enforceable obligation, but rather exerts an overriding moral influence, had supported the latter implementation in the body of the Constitution of *Seychellois Charter of Fundamental Human Rights and Freedoms*.

The Constitution in Article 48, Part V, Chapter III on the Principles of interpretation stipulates that the Charter "*shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms and a court shall, when interpreting the provision of this Chapter, take judicial notice of _*

- a) *The international instruments containing these obligations;*
- b) *The reports and expression of views of bodies administering or enforcing these instruments;*
- c) *The reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms;*
- d) *The Constitutions of other democratic States or nations and decisions of the courts of the States or nations in respect of their Constitutions".*

The main Human Rights Instruments to which Seychelles is Party are as follows:

a. International Covenants on Human Rights

- **International Convention on the Suppression and Punishment of the Crime of Apartheid** (*Accession 13/2/78*)
- **International Convention on the Elimination of All Forms of Racial Discrimination 1966** (*Accession 7/3/78*)

- Amendment to Article 8 of the International Convention on the Elimination of all Forms of Racial Discrimination, 1992 (*Accession 23.07.93*)
- **International Convention Relating to the Status of Refugees 1951** (*Accession 25/3/80*)
- Protocol Relating to the Status of Refugees (*Accession 23.04.80*)
- **Four Geneva Conventions, 1949** (*Accession 08.11.1984*)
- **Protocol Additional No. I (Protection of victims in IAC)** (*Accession 08.11.1984*)
- **Protocol Additional No. II (Protection of victims in N-IAC)** (*Accession 08.11.1984*)
- **Convention on the Rights of the Child** (*Ratification 7/9/90*)
- **International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, 1989** (*Accession 12.03.90*)
- **International Covenant on Economic, Social and Cultural Rights** (*Accession 5/5/92*)
- **International Covenant on Civil and Political Rights** (*Accession 5/5/92*)
- **First Optional Protocol to the International Covenant on Civil and Protocol Rights** (*Accession 5/5/92*)
- **United Nations Slavery Conventions 1926, 1956** (*Accession 05.05.92*)
- **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** (*Accession 05.05.92*)
- **Convention on the Prevention and Punishment of the Crime of Genocide, 1948** (*Accession 05.05.92*)
- **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984** (*Accession 5/5/92*)
- Amendments to Article 17 (7) and 18 (5) of the Convention Against Torture, Inhuman or Degrading Treatment or Punishment (*A 23.07.93*)
- Declarations made under article 22 of the Convention on the competence of the Committee to receive and consider communications from or on behalf of

individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention (6.08.2001).

- **Convention on the Elimination of All Forms of Discrimination Against Women 1979** (*Accession 5/5/92*)
- **Convention On the Elimination of All Forms Of Discrimination Against Women (Amendment)** (*Accession 23/7/93*)
- **Convention on Biological Diversity, Rio De Janeiro, 1992** (*Ratification 22.09.92*)
- **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families** (*Ratification 12/93*)
- **Second Optional Protocol on Civil and Political Rights (Elimination of Death Penalty)** (*Accession 15/12/94*)
- **Right to Organise and Collective Bargaining Convention** (*Ratification 4/10/99*).
- **International Labour Convention Concerning Discrimination in respect of Employment and Occupation 1958** (*Accession 23.11.1999*)
- **Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction** (*Ratification 2.06.2000*)
- **WHO Framework Convention on Tobacco Control** (*Ratification 12.11.03*).
- **UN Convention on Transnational Organized Crime** (*Ratification 22.04.03*)

Seychelles is also Party to almost all the International Labour Organisation Conventions on the rights of the workers, including the eight core treaties.

b. Regional multilateral Conventions on Human Rights

- **African Convention on the Conservation of Nature and Natural Resources** (*Ratification 14.11.77*)

- **Organisation of African Unity African Charter on the Rights and Welfare of the Child** (*Accession 13.02. 1991*)
- **Organisation of African Unity Charter on Human and Peoples Rights** (*Accession 13.04. 1991*)
- **Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region** (*Ratification 16.11.94*)

Seychelles also ratified plenty of International, Regional and bilateral Agreements on the Protection of the Environment and on the Protection of Cultural Heritage.

c. Conventions signed but not yet ratified

- **Protocol to establish an African Court on Human and People' rights** (*Signature 9 June 1998*)
- **Rome Statute on the International Criminal Court** (*Signature 28.12.2000*)
- **UN Convention against Corruption** (*Signature 27.02.04*)

- **Part IV**

Implementation of Human Rights

The Constitution of Seychelles provides for the “SEYCHELLOIS CHARTER OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS” (Chapter III). This body of rules relates to almost the totality of the rights enshrined in the African Charter, including civil, political, economic, socio-cultural rights, and the rights of vulnerable groups. Moreover, the Supreme Law establishes a legal mechanism which supports the implementation of such rights through the following articles:

Article 5 states: *"This Constitution is the Supreme law of Seychelles and any other law found to be inconsistent with this Constitution is to the extent of the inconsistency, void."*

Article 45 provides that the *"Chapter shall not be interpreted so as to confer on any person or group the right to engage in any activity aimed at the suppression of a right of freedom contained in the Chapter"*.

Article 46.1 provides that: *"A person who claims that a provision of this Charter (of fundamental rights) has been or is likely to be contravened in relation to the person by any law, act or omission may, subject to this article, apply to the Constitutional Court for redress"*.

Article 46.5 a): *"Upon hearing of an application under clause 1 the Constitutional Court may declare any act or omission which is the subject of the application to be a contravention of the Charter"*.

As a guarantee, the Charter may be modified only with the consensus of the majority of the people of Seychelles. It is established, by Article 91.1 a), b) of the Constitution, that the National Assembly, invested with the legislative power, shall not precede on a Bill to alter Chapter III, unless the proposed alteration has been approved on a referendum by not less than sixty percent of the votes, and, the Speaker signifies that such approval has been so given.

The ultimate objective of the Seychelles Constitution in implementing an adequate legal system of rules to safeguard the human rights regulated by Chapter III, is also mirrored in the office of the Ombudsman established by the Supreme Law in its chapter X.

Subject to Schedule 5 of the Constitution, the ombudsman has, among others, the following functions:

- a) to investigate an action taken by a public authority or the President, Minister, officer or member of the public authority, being action taken in the exercise of the administrative functions, where he receives a complaint from a person or body alleging that he/it has suffered a violation of the complainant's fundamental rights or freedoms under the Charter and, where the President or a Minister or member of the National Assembly requests the Ombudsman to investigate the action on the ground that the person or body has or may have suffered a violation of his/its fundamental rights under the Charter or, has been treated harshly or oppressively by the authority. [1.1a), 2 a)-b) i-ii];
- b) investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority. [1.1b)].
- c) to assist an individual complainant in respect of legal proceedings in relation to a contravention of the provisions of the Charter [1.1c)];
- d) with leave of the Court hearing proceedings relating a contravention of the provisions of the Charter, become a party to the proceedings [1.1d)];
- e) to initiate the proceedings relating to the constitutionality of a law or of the provisions of a law (1.1e).

This Schedule, invests the Ombudsman with the same power as a judge of the Supreme Court, in respect of the attendance of a person before him, the examination of any person in relation to an investigation, the production of a document or record relevant to an investigation and the inspection of premises.

Individuals

- **Principle of Non Discrimination. Article 2 ACHPR.**

The Principle of Non Discrimination is expressed in the **Preamble of the Constitution**, which states in its third paragraph that: "*...as descendants of different races we have learnt to live together as one Nation under God and can serve as an example for a harmonious multiracial society*". In paragraph seven: "*...the pursuit of happiness shall be free from all types of discrimination*".

One of the first Conventions which Seychelles acceded to, immediately after obtaining Independence, was in fact the UN International Convention on the Elimination of All Forms of Racial Discrimination 1966 (*Accession 7/3/78*). Accordingly, the Non Discrimination principle imposes on the State two types of obligations:

- I. Refraining from imposing undue limits to the enjoyment of fundamental rights on a ground of a racial, ethnic, colour, sex, language, religion or political difference;
- II. Acting in a positive manner to enable the more vulnerable citizens to ensure their access to fundamental rights.

The first type of obligation that the principle imposes on the State is, as in most of the democratic States, not literally expressed by a written law, however it have been

implemented together with the implementation of other human rights. For example, in the Constitution-

- Right to work: "[...] *fair and equal wages for work of equal value without distinction [...]*"
- Right to equal protection of the law: "[...] *enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground*".

In many cases it is through omissions in the law that this right is made a practice. Whenever there is a law, act, regulation or order which deals in a direct or indirect way with human rights, the distinction by race, ethnic group, colour, sex, language, religion, political opinion or origin is not stipulated. Moreover, mechanisms to avoid practice of discrimination in any way are already established.

Notwithstanding, some examples, as clear expression of the practice of the principle by the State, can be found in special dispositions:

Extradition Act, 1991. Laws of Seychelles 1996.

Section 6.1: "*A person shall not be extradited, or committed or kept in custody for the purpose of extradition, from the Republic if it appears to the Attorney General, the Magistrates' court in proceeding [...], the Supreme Court on a review [...] or an application for habeas corpus of the Court of appeal on a appeal [...]*

- a) that the offence of which the person is accused or was convicted is an offence of a political character;*
- b) that the request for extradition, though purporting to be made in account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinion; or*
- c) that he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinion".*

International Trade Zone Act, 1/07/1995. Laws of Seychelles 1996.

International Trade Zone (Employment) Regulations, 1997.

Regulation 41: "*Non-Seychellois workers, not exempt from the provisions of these Regulations, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers*".

Political Parties (Registration and Regulation) Act, 27/01/1992, Updated in 1996.

Section 7.2: "*A political party shall be deemed to have a purpose or object which is unlawful for the purposes of this Act if it seeks, directly or indirectly, to further ethnical, racial or religious discrimination or discrimination on the ground of the colour*" [Clause a)].

- **Equality before the law and right to equal protection of the law.**

Article 3 ACHPR.

Article 27.1 of the Constitution is consonant with the right enshrined in the African Charter, as it states:

"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".

Protection against discrimination or punishment for activities, opinions and beliefs is further provided by constitutional guarantees of freedom of speech and expression, freedom of thought, conscience and belief, freedom to practise any religion and to manifest such practice, and freedom of association.

The principle of *equality before the law*, although not expressly found in the cited Article 27, is implicit in all the Seychellois legislation, including the Constitution itself. There are no privileged social classes, or privileges among different persons, and no exceptions of the law where it is not required for the protection of the human rights of the person, or immunities relative to the discharge of duties.

The Penal Code for example, where it establishes its application, does not differentiate between persons. *"Nothing in this Code shall affect the liability, trial or punishment of a person for an offence against any law in force in Seychelles other than this Code".* [Article 3 a)]

Every person must respond before the law, including public officers, military officers, police officers, Ministers and even the President owe allegiance to the Constitution. The following are examples:

Constitution, Article 54 provides for the "Removal of President for violation of Constitution or gross misconduct". *"Where notice in writing signed by no less than half the number of the members of the National Assembly of a motion alleging that the President has committed a violation of this Constitution or a gross misconduct and specifying the particulars of the allegation and proposing that the Constitutional Court investigates the allegation [...]"*.

Police Force Act, 23/11/1959, updated in 1991.

Part VIII General Offences

Section 56: *"Nothing in this act shall exempt any person from being proceeded against under any other Act or law in respect of any offence made punishable by this act, or from being liable under any other Act or law to any other or higher penalty or punishment [...]"*

Provided that no person shall be punished twice for the same offence".

Defence Act, 1/01/1981. Laws of Seychelles 1996.

Section 6.1: *"It shall be the duty of a member of the Defence Force to obey the lawful orders of the Commander-in-Chief, the Chief of the Defence Force and the Chief of Staff of the Defence Force; and any other member of the Defence Force who holds a rank superior [...]"*

4: "An order which is inconsistent with the laws and usages of war is not a lawful order for the purposes of this section".

Defence Forces (Offences) Act, 1/01/1981. Laws of Seychelles 1996.

First Schedule, Part A

Paragraph 6.1: *"A person subject to this Act who commits a civil offence is guilty of an offence against this Act and is liable on conviction before a court-martial [...]"*

3: "In this paragraph "civil offence" means an offence under any law other than this Act".

The second type of obligation in the African Charter (equal protection of the law) is guaranteed in first place, through Clause (2) of the same Article 27, which, by introducing an exception, protects the disadvantaged groups. *"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".* The following Articles of the Constitution are example of it:

Article 30: *"The State [...] take appropriate measures to ensure that a working mother is afforded special protection with regards to paid leave and the working conditions during [...] the period [...] before and after childbirth".*

Article 31. *"The State recognises the right of children and young persons to special protection in view of their immaturity and vulnerability [...]"*

Article 36. *"The State recognises the right of the aged and the disabled to special protection [...]"*

Secondly, the implementation of this right can be seen in all the legislation, specially, for example in the employment legislation, in the social security system, education facilities, health care and protection of the family, amongst others.

- **Right to life and integrity of the person. Article 4 ACHPR.**

The Constitution stipulates:

Article 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 by any act or omission which is made not punishable by any law reasonably justifiable in a democratic society; or as a result of a lawful act of war" [Clauses a) and b)].*

The African Charter on Human and Peoples' Rights, leaves the door open to the possibility for the States to limit the right to life as the consequence of a lawful act ("*No one may be arbitrarily deprived of the right to life*"). Notwithstanding the Seychelles Constitution of 1993 goes further and abolishes the Death Penalty.

Moreover, in order to strengthen this fundamental right, **Article 25.4** of the Constitution states that:

"A law providing for the extradition of a person 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".

In the Seychelles there are limitations to the right to life as provided for by Article 15.3 (a) of the Constitution. For example, the abortion is an act which is sometimes not punishable by law although it renders the termination of a life.

Termination of Pregnancy Act, 3rd June, 1994

To safeguard the health of a pregnant woman or prevent the risk of physical or mental abnormalities of a child, Section 3 of the Act enables a gynaecologist on the recommendation of a panel of three medical practitioners to terminate a pregnancy at the Victoria Hospital.

Where a court determines that a pregnancy is the result of rape, incest or defilement or that the pregnant woman has been interdicted under the Civil Code or Medical Treatment Act, Section 4 enables a gynaecologist to terminate the pregnancy at the Victoria Hospital.

A person who has a conscientious objection to participation in a termination of pregnancy may refuse except where such participation is necessary to save the life of or prevent grave permanent injury to the physical or mental health of the pregnant woman (Section 7).

Amendments have been approved within the criminal procedure to abolish from the subsidiary legislation the application of the death penalty.

Criminal Procedure Code (Amendment of Third Schedule) Regulations, 1999.

Regulation 2: *"The Third Schedule of the Criminal Procedure Code is amended as follows-
a) under chapter VII by repealing the entry in the 4th column corresponding to section 39 in the first column and substituting therefore the words "imprisonment for life".*

Penal Code, 1/02/1955, Laws of Seychelles 1996.

The Code, complying with the derogation of the sentence of death, establishes the only punishments that the courts are allowed to impose on the offenders:

Section 25: *"The following punishments may be inflicted by a court-*

- a) Imprisonment*
- b) Fine*
- c) Payment of compensation*
- d) Finding security to keep the peace and be of good behaviour*
- e) Liability to police supervision*
- f) Forfeiture*
- g) Any other punishment provided by this Code or by any other law".*

The following Sections of the Penal Code are more examples of the implementation of a mechanism for the protection of this right:

Section 148: *"Any woman who being with child with intent to or procure her own miscarriage unlawfully administers to herself any poison [...] or uses any force of any kind or uses any other means whatever or permits any such thing or means [...] is guilty of a felony and is liable to imprisonment for seven years".*

Section 149: *"Any person who unlawfully supplies to procure [...] the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and liable to imprisonment for three years".*

Section 200: *"A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether It has breathed or not, and whether it has an independent circulation on or not, and whether the navel-string is severed or not."*

The Code in its Division IV "Offences against the person" describes and punishes, crimes concerning to this matter. The more serious ones are the following:

Section 192: *"Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter [...] "*

Section 193: *"Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder"*.

Civil Status Act, 22/04/1893, Laws of Seychelles 1996.

[Updated by the "Civil Status (Amendment) Act, 2000]

Section 36.1: *"Any person, who shall find a newborn child, shall be bound, within twenty-four hours after finding the child, to give [...] notice of the fact to the nearest officer of police"*.

Section 116: *"Any person who, having found a newborn child, shall neglect to make the declarations and fulfil the formalities required of him by section 36 shall be guilty of an offence and on conviction liable to a fine not exceeding two hundred rupees or imprisonment not exceeding six months"*.

The fact that human beings are inviolable, is extended in Seychelles Legislation to the post mortem of the person, therefore no one is allowed to dispose freely of a Human body. This Act, establishes in Section 117 that:

"Whoever shall bury or otherwise dispose of any human body without having obtained a permit from an officer of the civil status, or before or after the period required [...], or in any unauthorised burial ground, shall be punished by a fine not exceeding five hundred rupees or by imprisonment not exceeding six months".

The Penal Code in Section 129, dealing with the integrity of the deceased person establishes: *"Whoever unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects, or harms the dead body of any person or, being under a duty to cause the dead body of any person to be buried, fails to perform such duty, is guilty of a misdemeanour"*.

- **Right to dignity and freedom from slavery and forced labour.**

Article 5 ACHPR.

In 1835 Slavery was officially abolished in Seychelles, however the working conditions of the liberated Africans did not improve for many decades later.

Seychelles has acceded to a number of Conventions, which protect the rights to dignity, freedom from slavery and forced labour.

Articles 16 and 17 of the Constitution lay down as follows:

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"*.

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"*.

Penal Code, 1/02/1955, updated in 1996.

Article 249: *"Any person who imports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as slave, is guilty of a felony, and is liable to imprisonment for ten years"*.

Article 250: *"Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony, and is liable to imprisonment for fourteen years"*.

Article 251: *"Any person who unlawfully compels any person to labour against the will of that person is guilty of misdemeanour and is liable for imprisonment for three years"*

The respect of dignity by the special legislation can be seen through the following articles:

Criminal Procedure Code, 1/02/1955, updated in 1996.

Article 16: *"Whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency"*.

Prisons Act, 16/12/1991, Laws of Seychelles 1996.

Section 11: *"A male prison officer shall not enter or remain in a cell in which a female prisoner is confined unless he is accompanied by a female prison officer"*.

The Rehabilitation of Offenders Act 1996 is another example of the right to the respect of dignity. As the Bill itself explains it seeks to help to combat criminality as it affords an offender the opportunity to start fresh after a period of abstinence from crime. It is *"An Act to facilitate the rehabilitation of individuals who have not been reconvicted of certain offences over specified periods, to prohibit the unauthorised disclosure of the convictions in respect of these offences and for connected purposes"*.

- **Right to liberty and to security of his person.**

Article 6 ACHPR.

Both the African Charter and the Constitution of Seychelles convey the principle the same way.

The Constitution in **Article 18.1** states: *"Every person has a right to liberty and security of the person"*.

3: A person who is arrested or detained has a right to be informed at that moment or as soon as is reasonably practicable, in a language that the person understands, of the reasons for the arrest, a right to remain silent, 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.

4: A person arrested or detained shall be informed at that moment or as soon as reasonably practicable thereafter of the rights under clause (3).

5: A person arrested or detained, if not released, shall be produced before a court within twenty-four hours of the arrest or detention. Exceptions to this are the cases of deportees from other countries in transit and, suspected prohibited immigrants. They may be detained until such time as arrangements can be made for the continuation of their journey and, for such reasonable period not exceeding 14 days as may be required for enquires, respectively (Immigration Decree, Sections 7 and 22).

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. (This principle derives directly from the Presumption of innocence) except where the court, having regard to the following circumstances, determines otherwise"-

- a) the offence is 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, interfere with witnesses, obstruct the course of justice or commit an offence while on release;
- d) there is a necessity to keep the suspect in custody for the suspect's protection;
- e) the suspect is serving a custodial sentence;
- f) a previous breach of the conditions of release for the same offence.

8: *"A person who is detained has a right to take proceedings before the Supreme Court in order that Court may decide on the lawfulness of the detention and order the release of the person if the detention is not lawful".*

10: A person unlawfully arrested or detained has a right to receive compensation from those that unlawfully arrested or detained that person, including the State.

11: A person who has not been convicted, if kept in a prison, shall not be treated as a convicted person and shall be kept away from any convicted one.

12: A minor who is kept in lawful custody or detention shall be kept away from any adult offender or suspect.

13: A female offender or suspect shall be kept separately from any male offender or suspect.

14: Any period which the convicted person has spent in custody in respect of the offence, shall be taken into account by the court in imposing any sentence of imprisonment.

15: *"A person shall not be imprisoned merely on the ground of the inability to fulfil a contractual obligation".*

Notwithstanding the above mentioned rights, the arrest or detention in accordance with the procedures established by law is permitted, among others, in the following cases (**Article 18.2** of the Constitution):

- a) In execution of a sentence or other lawful order of a court;
- b) On reasonable suspicion of having committed or being about to commit an offence for the purposes of investigation or prevention;
- c) To prevent the spread of infection or contagious diseases;
- d) For the treatment and rehabilitation of persons reasonably suspected to be, of unsound mind or addicted to drugs;

- e) For the prevention of an unauthorized entry into the country or in view of deportation or extradition;
- f) For the rehabilitation and welfare of a minor.

The implementation of the right can be seen moreover, in other dispositions such as those in the Criminal Procedure Code, in the Detention Review Tribunal Decree, and the Prisons Act.

Criminal Procedure Code 1955, Laws of Seychelles 1996.

Section 10.1: *"In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action"*.

2: *"If such person forcibly resists [...] such police officer or other person may use all means necessary to effect the arrest:*

Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed, or was necessary for the apprehension of the offender".

Section 13: *"The person arrested shall not be subjected to more restraint than is necessary to prevent his escape"*.

Section 43. Discharge of person informed against: if on an inquiry is not proved that it is necessary for keeping the peace or maintaining good behaviour that the person execute a bond the judicial officer shall release or discharge him.

Section 85: *"The police officer or other person executing a warrant of arrest shall [...] without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person"*.

The Procedure regulates exceptional cases where the arrest can be effected without warrant (Section 18). However, *"A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before the Judge or a Magistrate or before an officer in charge of a police station and sections 100 and 101 shall apply to such person"* (Section 21).

Section 100: A person who is arrested without a warrant or detained pursuant to a written law which does not provide otherwise shall be released within 24 hours of the arrest or detention unless the court has ordered that he be remanded in custody or the police officer in charge has reasonable grounds for believing that it is necessary to preserve or obtain evidence and the offence for the arrest is a serious one. [Clauses a) and b) paragraph 1].

Section 101. Remand by court.

Section 352.1: *"The Supreme Court may whenever it thinks fit direct –*

b) *That any person illegally or improperly detained in public or private custody within such limits be set at liberty"*

Detention Review Tribunal Decree, 19/05/1978, Laws of Seychelles 1996.

Section 2.1: *"There shall be a tribunal to be called the Detention Review Tribunal consisting of a Chairman appointed by the Chief Justice and of two other members appointed by the President"*.

Section 3.1: *"The Tribunal shall review the case of any persons detained by virtue of any law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Seychelles during that period.*

2: *Such review shall take place not later than one month from the date of detention under any such law and thereafter during the period of detention at intervals of not more than six months"*.

Section 8: *"Any person who contravenes or fails to comply with the requirements of this Decree shall be guilty of an offence and liable on conviction to a fine [...]"*.

Prisons Act, 16/12/1991, Laws of Seychelles 1996.

Section 19.1: *"No person shall be confined in a prison except under the authority of a remand warrant, a warrant or order of detention or a warrant of conviction or committal"*.

2: *"The Superintendent may permit a child of a female prisoner to be detained with her in a prison if the child is being breast-fed by her and is less than 18 months in age"*.

In a way of achieving security for the prisoners, this Act in Section 21 (Classification and separation of prisoners), subsection 1, states: *"Male and female prisoners shall be confined in separate parts of a prison [...]"*. Subsection 2, divides them into distinct classes, namely: young persons, adults, prisoners awaiting trial, convicted prisoners, civil prisoners, first offenders and recidivists.

According to subsection 3 of the same Section, *"As far as the prison accommodation renders it practicable-*

- a) *young persons shall be kept apart from adults;*
- b) *prisoners awaiting trial shall be kept apart from convicted prisoners;*
- c) *civil prisoners shall be kept apart from convicted prisoners; and*
- d) *first offenders shall be kept apart from recidivists"*.

• **Right to a fair trial and to appeal** **Article 7 ACHPR.**

Together with the right to liberty, the right to a fair trial represents the core of the protection against abuses in the field of civil and political rights and freedoms. The Constitution of Seychelles is profuse in this matter. Its **Article 19** includes all the general principles which, since the ancient Roman Law, guarantee a fair trial, including others introduced by the latest international developments in human rights.

Through this Article the Constitution expresses in a comprehensive way the main issues found in the right of a fair hearing: the need to be heard; the relevance of the time-limit on the effectiveness of justice; the independence and impartiality of the Court as the only guarantee against the manipulation of justice; and finally the procedural guarantee that a Court should be created by law:

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".*

In **paragraph 2, Article 19** goes further by providing, a wide range of safeguards which are:

- a) The Presumption of innocence;
- b) The use of an language understandable by the accused when informed of the charges;
- c) The right to time to prepare the defence to the charge;
- d) The right to be defended in person or by a legal practitioner;
- e) The right to direct and crossed examination of both their own and the prosecution witnesses;
- f) The right to avail oneself of an interpreter at the trial;
- g) The right not to be compelled to testify or confess guilt;
- h) The right to silence and not to have adverse reference drawn on the silence;
- i) The right to not be proceeded against *"in absentia"* unless when it is the consequence of the accused conduct before the court;

19.4: "*Nullum crimen, nulla poena sine lege*" or the right to not be prosecuted or punished on account of any charge or penalty which did not constitute an offence at the time of the deed' commission. The only exceptions to this fundamental principle of a State of law are the offence of genocide and any other offence against humanity.

19. 5: "*Ne bis in idem*" or the right to not be neither prosecuted nor condemned twice on the same charge for the same act.

19. 8: of the referred article: "*[...] all proceedings of every court [...] including the announcement of the decision of the court or other authority, shall be held in public*".

However, according to paragraph 9, the "*hearings in Camera*" or close court, are lawful where publicity would prejudice the interest of: justice; defense; interlocutory proceedings; public morality; safety; minor welfare and, the privacy of the accused.

19.11: Right to appeal: "*Every person convicted of an offence shall be entitled to appeal in accordance with the law against the conviction, sentence and any order made on the conviction*".

19.13: The right to be compensated: "*Every person convicted 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*".

These rights are thereafter guaranteed by the subsidiary legislation:

Criminal Procedure Code, 1/02/1955. Laws of Seychelles 1996.

Section 169: "*Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate*".

Section 170.1: "*Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted, to him in open court in a language understood by him*".

2: "*If he appears by advocate and the evidence is given in a language other than English, and not understood by the advocate it shall be interpreted to such advocate in English*".

Section 181.1: "*The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge*".

3: *If the accused does not admit the truth of the charge or if the court does not accept his admission the court shall proceed to hear the case [...].*

4: *If the accused person refuses to plead, the court shall order a plea of "not guilty" to be entered for him".*

Section 182: *"If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence, if any.*

The accused person or his advocate may put questions to each witness produced against him.

If the accused person does not employ an advocate the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wished to put any questions to that witness and shall record his answer".

Section 248: *"Any statement by the accused recorded by the magistrate during the proceedings for committal may be read as evidence either for the prosecution or for the defence".*

Section 249.1: *"If when the case for the prosecution has been concluded, the Judge rules as a matter of law, that there is no evidence on which the accused could be convicted, the Jury shall, under the direction of the Judge, return a verdict of not guilty.*

2: In any other event the court shall call upon the accused for his defence".

Section 308.1: *"Save as hereinafter provided any person convicted on a trial held by the Magistrates' Court may appeal to the Supreme Court".*

The Courts Act, 30/11/1964 (Laws of Seychelles 1996)

Section 14: *"Appeals (in the Court of Appeal) from decisions of the Supreme Court in criminal matters shall be governed by the Criminal Procedure Code and by any other law now in force or to be enacted".*

Criminal Procedure Code

Part X regulates the procedure to appeals from the Magistrates Court (Sections 308-341) and from Supreme Court (Sections 342 and 343)

Section 308.1: *"Save as hereinafter provided any person convicted on a trial held by the Magistrates' Court may appeal to the Supreme Court.*

2: An appeal to the Supreme Court may be on the matter of fact as well as on a matter of law".

Section 342.1: *"Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal against his conviction or against the sentence passed on his conviction with the leave of such Court of Appeal, unless the sentence is one fixed by law".*

Legal Aid Act, 1/02/1986, Laws of Seychelles 1996

Section 6.1: *"Subject to this act, legal aid shall be available to any person charged with an offence and shall relate to proceedings in any court in any exercise of original or appellate jurisdiction in criminal matters in respect of that offence".*

2: *"For the purposes of subsection (1), legal aid shall consist of representation by a legal practitioner in the preparation and conduct of the defence in respect of the offence and in relation to proceedings by way of appeal in the preparation and conduct of the appeal".*

Section 7: *"Where the financial circumstances of a person charged with an offence are such that he is unable without undue hardship to himself or his dependants to meet the expenses of proceedings in relation to that offence-*

- a) he shall, where the offence is murder or any other capital offence be granted legal aid;*
- b) he may in any other case having regard to the gravity of the offence of the officer or other exceptional circumstances be granted legal aid".*

The hearing of civil causes

The implementation in a democratic society of the right of every individual to have his cause heard and, as a result, get fair decisions must be extended to the civil sphere or side of the application of the law. It is in this context where important rights such as those related to property, freedom of movement, suffrage, health, education etc, may be brought to tribunals to seek justice.

Thereafter Seychelles' judicial system extends to the civil cases the impartiality of the courts, the rights to appeal, to be compensated and to obtain legal aid, among others. The following legal dispositions are examples:

Seychelles Code of Civil Procedure, 15/04/1920. Updated in 1991.

Section 22: *"All civil and commercial suits, actions causes and matters shall be brought before the Supreme Court, save in cases where other provisions is made by law."*

Section 29.1: *"All the claims by the Government of Seychelles against any private person shall be brought in the name of the Attorney General [...].*

2: All the claims against the Government of Seychelles [...] if the claim had been against a private individual may, be preferred in the Supreme Court in a suit instituted by the claimant as plaintiff against the Attorney General as defendant".

Legal Aid Act, 1/02/1986. Laws of Seychelles 1996.

Section 3.1 *"Subject to this Act, legal aid shall be available to any person-*

- a) in any civil proceeding not being a proceeding exempted by rules made under this Act; and*
- b) in taking any steps to assert or dispute a claim which may give rise to a civil proceeding for which legal aid shall be available [...]"*

- 2: "Legal aid shall consist of
- a) in relation to subsection 1(a), representation by legal practitioner including such assistance as is usually given by a legal practitioner in the steps [...] to a civil proceeding or in arriving or giving effect to a settlement to bring an end to such proceeding;
 - b) in relation to subsection 1(b), the assistance of the legal practitioner in advising on the steps necessary to assert or dispute the claim".

Section 4: "For the purpose of section 3, legal aid shall be granted to any person whose disposable income does not exceed the level of subsistence declared [...] under [...] the Social Security Act".

Courts Act, 30/11/1964. Laws of Seychelles 1996.

Section 6: "The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles".

Section 12.1: "Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction"

Courts Act, 30/11/1964

The Appeal Rules, 24/02/1961. Laws of Seychelles.

Rule 6. Civil appeal from Magistrates.

Rules 20-26. Procedure at Hearing (in the Supreme Court).

Rule 27. Appeals from other tribunals.

To materialise the aid provided by the law, the Legal Aid Act establishes a fund, for the solvency of the expenses in this purpose, both in criminal and civil matters.

Section 10.1: "There shall be a fund to be called the **Legal Aid Fund**.

2: The Fund shall consist of moneys provided by Government; moneys paid by way of contributions and costs under this Act.

3: Moneys of the Fund shall be applied in meeting the expenses of legal aid under this Act or in making any payments authorised by this Act".

- **Freedom of conscience,
the profession and free practice of religion.**

Article 8 ACHPR.

These Freedoms are guaranteed in the Constitution under **Article 21**, which provides that: *"Every person has a right to freedom of conscience"*

The Constitution, aware of the need for a wider and effective protection of this sensitive freedom goes further than the ACHPR as it concerns to religion: *"[...] 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"*

The freedom of the profession is more specifically enshrined by Chapter III of the Supreme Law on **Article 35** ("Right to work"), which establishes in **clause b)** that *"the State undertakes [...] to protect effectively the right of a citizen to earn a dignified living in a freely chosen occupation, profession or trade"*.

The very private aspect of freedom of conscience is unalienable. Nevertheless, as the African Charter also recognizes, a balance between this guarantees and others necessities in a democratic society, requires some limitations. In order to avoid an abusive use of these freedoms, such limitations has been prescribed by law: *"[...] the freedom to manifest and propagate a religion or belief may be subject to limitations [...]"*:

- a) in the interest 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". [Article 21.2 a), b)]*

The freedom of conscience implies also the right to get a secular education or refuse it. Either public or private schools take this into account: "*A person attending any place of education shall not be compelled to impart or receive religious instruction [...]*" (**Article 21.3**)

Moreover **paragraph 4** estates: "*[...] a person shall not be compelled to take any oath that is contrary to the religion or belief of that person [...]*"

Religion plays an important role in Seychelles society. However Seychelles remains a lay State where: "*A person shall not be required to profess any religion as a qualification for public office.* (Same Article, **paragraph 5**) and, according to **paragraph 6**: "*A law shall not make provision for the establishment of any religion or the imposition of any religious observance*".

These Constitutional provisions are further entrenched into a wide range of National legislation.

Laws of Seychelles 1996.

Following the practice in the prior edition of the "Laws of Seychelles" of 1991, the present edition has included the Acts of recognisance of religions in the State -

Chapter 7. Anglican Church (Constitution of Anglican Diocese of Seychelles) Act

Chapter 103B. Islamic Society of Seychelles Incorporation Act

Chapter 144. National Society of the Baha'is of Seychelles (Incorporation) Act

Chapter 207. The Roman Catholic Mission of Seychelles (Incorporation) Act

Chapter 210. Seventh-Day Adventist Mission (Incorporation) Act.

There are in place mechanisms to enable any other religious organisations to apply for legal recognition.

The Penal Code, 1/02/1955, updated in 1996.

Implements the Constitutional rules on the matter. Its Chapter XIV, entitled: *Offences Relating to Religion*, includes:

Article 125: "*Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with intention of [...] insulting the religion of any class [...] or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour*".

Article 126: *"Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour"*.

Article 128: *"Any person who, with the deliberate intention of wounding the religious feelings of any other person, writes any words, or [...], with the like intention utters any word or makes any sound [...] or makes any gesture or places any object in the sight of any other person is guilty of misdemeanour and is liable to imprisonment for one year"*.

- **Right to receive information and to disseminate his opinions (Freedom of expression) Article 9 ACHPR.**

This is probably the most delicate and vulnerable right of those intended to be protected by either national and international laws and represents one of the key issues of the leading texts on Human Rights. It is enshrined, in Article 11 of the 1789 Declaration of the Rights of Man and the Citizen; in Article 19 of the Universal Declaration of Human Rights, and in Article 19 of the International Covenant on Civil and Political Rights of 16 December 1966.

The two inalienable components of this right: "freedom of opinion" and "freedom of information" are protected by the Constitution of Seychelles in its **Article 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, received and impart ideas and information without interference".

For a long time the basic issue raised by freedom of expression was attainment of the conditions most conducive to its full development. Nowadays, in the "pacified democracies", the issue tending to "make headlines" has concerned the relationship between freedom of expression and other rights whose protection might clash with the full blooming of freedom of expression. We are therefore faced with a situation that is delicate but also rich. It reflects the complexity of reality: the unitary, monistic vision of legal systems must give way to a perception of competing, confrontational areas. This should make possible to adopt a holistic approach in which the various aspects are considered side by side to ascertain their concordances and also their contradictions. It is in the aim of searching for this balance that **Article 22** in its

second clause provides that: *"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 defense, 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;*
- (f) *For the imposition of restriction upon public officers".*

The Constitution, in Article 28 regulates the *right of access to official information*:

Article 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".*

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 [...]"*

Public service employees, medical patients are guarantee access to personal information maintained on them. This information may be corrected or altered at the request of the individual.

Each right and freedom is proclaimed, recognised and guaranteed, but, at the same time, as we already said, each one is capable of limiting the other and being limited by it. Indeed, freedom of expression may be openly hostile to the right to respect for private life. A conflict of values lies within the tension between, the public's right to be informed and the right to one's privacy or reputation. The way by which **Article 28**, regulates the *right of access to official information*, is another example of the said balance.

The Constitution addresses potential conflicts, by establishing in **clause 2** of this Article, limitations to the right:

- 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".*

Article 168 is another example of the protection of freedom of expression by the Constitution:

"The State shall ensure that the broadcasting media which it owns or controls or which receive a contribution from the public fund are so constitute and managed that they may operate independently of the State and of the political or other influence of other bodies, persons or political parties".

Accordingly the rest of the legislation provide for rules which implement these rights.

The Penal Code, 1/02/1955. Laws of Seychelles 1996.

This body establishes, to the effects of not making them punishable, the acts, which, according to Section 54.2, are not considered seditious.

- a) *"To endeavour in good faith to show that the persons responsible for the Government have been or are mistaken in any of their counsels, policies or actions;*
- b) *to point out in good faith errors or defects in the Government, the Constitution, the People's Assembly or the administration of justice [...];*
- c) *to excite in good faith another person to attempt to procure by lawful means the alteration of any matter established by law in Seychelles;*
- d) *to point out in good faith, in order to bring about their removal, any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different classes of persons".*

The parliamentary proceedings represent another avenue of freedom of expression in a democratic society.

Constitution of the Republic of Seychelles, 21/06/1993

Article 97: *"Subject to the Standing Orders meetings of the National Assembly shall be open to the public and may be broadcast".*

Article 102.1: *"There shall be freedom of speech and debate in the National Assembly and a member shall not be subject to the jurisdiction of any court or to any proceedings whatsoever, other than in proceedings in the Assembly, when exercising those freedoms or performing the functions of a member in the Assembly".*

In consonance, there is established a related subsidiary legislation, which includes, among others the following dispositions:

National Assembly Standing Orders, 1994.

This body of 93 orders, organised in XX parts regulates all the issues concerning to the activities of the Parliament, such as presiding officer, members, sessions, meetings, papers, questions, statements, motions, voting, legislation, admission of press and public, etceteras.

Order 85: *"The speaker may grant a general permission to the representatives of any journal, newspaper or broadcasting organisation to attend the meeting of the Assembly [...] under such rules as the Assembly may make from time to time for that purpose"*.

Order 86: *"Members of the public may be present in the Assembly Chamber in the places set apart for them whilst the Assembly or a Committee of the Whole Assembly sits"*.

People's Assembly (Privileges and immunities) Act, 3/11/1975. Laws of Seychelles 1996.

Section 3: *"There shall be freedom of speech and debate in the Assembly. Such freedom of speech and debate shall not be liable to be questioned in any court or place outside of the Assembly"*.

Section 4: *"No civil or criminal proceedings may be instituted against any member for words spoken before, or written in a report to, the Assembly or to a committee thereof or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise"*.

Concerning specifically to the right of privacy enshrined by the Constitution in **Articles 22.2 b)**, and **28.2 d)**, the following dispositions can be mention as examples:

Supreme Court (Interception of Correspondence or Other Means of Communication) Rules, 1993.

Rule 2: *"An application for interception of correspondence or other means of communication of a person shall be made to a Judge in Chambers"*.

Rule 3: *"The application [...] shall be made by way of petition accompanied by an affidavit in support of it"*.

Rule 5: *"The affidavit [...] shall disclose sufficient material to satisfy the Judge that it is necessary or desirable for the purpose of any investigation that any correspondence or means of communication of a person specified in the affidavit should be intercepted"*.

Criminal Procedure Code (Amendment) 1997.

This amendment has been introduced to the Criminal Procedure Code to enable the collection and analysis of both intimate and non-intimate samples from a person for the purpose of crime detection, however:

"The right to privacy is further safeguarded by the following requirements

- 1. the decisions to take samples from persons are authorised by relatively senior officers and written records of those decisions are kept;*
- 2. the person whose consent is being sought is informed of the right to refuse to give a sample*
- 3. the person from whom the sample is to be taken is notified as to why the sample is required, whether authorisation has been obtained or a court order has been given for the taking of the sample.*
- 4. where a court order is being sought, sufficient information about the applicant, the suspect, the reason for requesting the order and the type of sample required must be given to allow the court to make an informed decision" (Objects and reasons).*

Data Protection Bill, 2002

Objects and reasons.

This Act seeks to regulate the holding of data containing personal information in computers by users of such data and the disclosure of such information. It is sought to ensure that persons who use data containing personal information obtain such information fairly and lawfully, for specific purposes, protect the data from unauthorised access, alteration or destruction, etc.

- **Right to free association.** **Article 10, ACHPR.**
- **Right to assembly.** **Article 11, ACHPR.**

Both rights are contemplated together by the Constitution of Seychelles in the same Article and, as they may have social, political and economical character, their implementation by the legislation can be seen through the Acts that regulate aspects of the social political and economic life of Seychelles.

A key issue in the implementation of these freedoms is the right to organise. National laws have been also enacted having in mind the accession of the Republic to the "**Right to Organise and Collective Bargaining Convention**" of the ILO, which was ratified on the 4th October 1999.

The Constitution in **Article 23.1** establishes: "*Every person has a right to freedom of peaceful assembly and association and for the purpose of this article this 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 [...] 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) *in respect of the registration of associations or political parties;*
- c) *for the protection of the rights and freedoms of another persons;*
- d) *for imposition of restrictions on persons who are not citizens of Seychelles or public officers or members of the disciplinary forces*".

For example under the Public Health Act assemblies or meetings may be ban in the public health interest, as was the case on the recent SARS epidemic.

Article 118 of the Constitution: "*An Act shall provide for the registration of political parties, qualifications for entitlement to be registered [...], the maintenance of a register of political parties by the Electoral Commissioner, the submission of accounts and other prescribed particulars [...]*".

Commercial Code, 1/01/1977. Laws of Seychelles 1996

This Code, in consonance with the right enshrined by the Constitution, stipulates the different legal persons to be admitted in Seychelles.

Article 47.1 "*The law recognises four kinds of legal persons:*

1st. *A company formed and registered under the Companies Act.*

2nd. *An association, the object which is not pecuniary gain to its members, and registered under the Registration of Associations Act*".

3^d. *A partnership under articles 1832 to 1873 inclusive of the Civil Code.*

4th. *A commercial partnership of no more than ten persons the object of which is the acquisition of gain [...]*"

The subsidiary legislation below shows the endeavour of the State in bringing into operation the dispositions of the Supreme Law regarding the right of free association and assembly.

Registration of Associations Act, 16/05/1959, Laws of Seychelles 1996

Section 2: *In this Act "association" means two or more persons who have agreed to contribute by their knowledge, energy, fortune or other lawful means [...] towards the attainment of a common object which shall not be pecuniary gain to themselves and which shall not be contrary to law, morality and public policy [...]"*

Section 3.1: *"A registered association shall be a body corporate having perpetual succession and a common seal, and power in its corporate name to acquire, hold, and dispose of property, movable or immovable, and generally to all such acts and things as bodies corporate may do and perform".*

2: *"No association shall be a body corporate unless its secretary causes it to be registered in the manner hereinafter provided".*

Section 4.1: *"The secretary of an association seeking registration under this Act shall make application in writing to the Registrar in that behalf and shall furnish [...] information certified true under his hand" regarding name, place and objects, name and occupation of the officers, the rules of the association, etc.*

2: The Registrar, after considering the application may register the association by entering its name in the Register of Associations, request that its books be kept in English or French or Creole, or, refuse registration. In cases of request as a condition for registration or refusal of registration, an appeal may lie to the Minister against such decision of the Registrar.

The Act also regulates rights of members, voluntary dissolution and amalgamation of associations.

Co-operatives Act, 1/02/1988, Laws of Seychelles 1996.

Section 2.1: *"The Minister may, by Order published in the Official Gazette establish a co-operative".*

Section 3.2: *"A co-operative shall have the power to do all things necessary or convenient to be done in carrying out its objects and may, with the approval of the Minister, borrow money"*

Section 4.1: *"Any person of or above the age of 18 years shall be eligible for membership of a co-operative".*

This Act also regulates the establishment of a co-operative fund, Government aid, etc.

Political Parties (Registration and Regulations) (Amendment) Bill 1996

Objects and reasons:

"Article 118 of the constitution requires an Act to provide for the provision of the financial support from public funds to political parties. The Political Parties (Registration and Regulations) Act (cap 173) now provides for other matters required to be enacted by an act. This bill seeks to amend that

Act to make provision for provision of financial assistance from public funds to registered political parties.

The new Sections 27 to 30 seek to establish a fund to be called the Political Parties Financial Support Fund into which moneys appropriated by the Appropriation Act would be paid and out of which the Registrar of Political Parties would grant assistance to the Parties".

Political Parties (Registration and Regulation) Act, 27/01/1992, updated in 1996.

Sections 3 and 4: *"There shall be a Registrar of Political Parties who shall be the Electoral Commissioner appointed under Article 115 of the Constitution. The Registrar shall keep a register in which recorded such particulars relating to a registered political party as may be prescribed".*

Section 5: *"A political party consisting of not less than 100 registered members may apply in the prescribed form to the Registrar for registration under this Act".*

Section 7. "Refusal to register" regulates the only causes by which the registration may be denied, accordingly, the Registrar may refuse if he is satisfied that-

- a) the application is not in conformity with this Act
- b) the name of the party is identical to the name of a registered one or so nearly resembles it, or is provocative, offends against public decency or is contrary to any written law.
- c) Any purpose or object of the party is unlawful.

Paragraph 2 of this Section describes, the purposes that are considered unlawful: to further discrimination, to seek to effect changes in the Republic through violence and, to secede any part of the Republic from the Republic.

In any case of refusal there is a right to appeal.

Section 26: *"A registered political party shall be exempt from tax on its income".*

Section 27.1: *"There is hereby established a fund to be called the Political Parties Financial Support Fund..."*

Section 28.1: *"The moneys to the Fund shall consist of monies appropriated by an appropriation Act paid into the Fund".*

Section 29.2: *"Each political party which had nominated candidates for the immediately proceeding general election shall be entitled to receive ... such sum as is equal to the proportion which the total of number of valid votes cast or deemed to be cast..."*

The Act moreover includes confidentiality.

Industrial Relations Act, 12/11/1993

Specifying objects and reasons of the Act, the introductory part of the Industrial Relations Bill states: *"This Bill seeks to give legislative effect to the decision of the Government,*

in furtherance of the right to freedom of association and the undertakings of the State in relation to the right to work enshrined in the Constitution [...] to allow multi trade unions.

The constitutional right of freedom of association, in its application to trade union, is spelt out in Part IV of the Bill".

Part V, of the "Industrial Relations Act" of 12/11/1993 itself, under the title of "Promotion of industrial relations" includes the following Sections:

Section 39: Agreement for representational status.

Section 40: Order for representational status.

Section 42: Collective agreement.

Sections 43, 44 and 45; conditions, registration and effect of check-off agreement respectively.

Section 36. Right of worker to join or not a trade union. *"An employer shall not refuse to engage a person or otherwise discriminate against an employee because [...] is a member or officer of a trade union or refuses to become a member [...] or take part in the activities of the trade union".*

Public Service Orders, June 1996

Order 99: *"Employees, as citizens of Seychelles, are free to participate in political activities and may become office bearers of a political party"*

Order 100: *"It is the policy of the Government to encourage active participation by employees in the affairs of trade unions. Such active participation shall not prejudice an employee's official career".*

It is also established by the legislation, as a practice of the "right to assemble", the right to strike, as a last resource to resolve industrial disputes after having exhausted the mediums of the Dispute Settlement Board and, or, the Industrial Relations Tribunal. The Industrial Relations Act, 12/11/1993, in its Section 52 regulates this right and the requirements for its lawful convocation.

• Right to freedom of movement and residence. Right to leave and to return. Article 12, ACHPR.

Constitution Article 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 it".*

3. This right may be subject to such restrictions as are prescribed by a law necessary in a democratic society:

- a) *"in the interest 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".*

5. *"A law providing for the lawful removal from 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".*

Seychellois are free to choose the place for their residence and to travel within the borders of the State. They are also free to travel to other countries and return without any hindrance. The Government has not instituted either legislation or specific requirements for its citizens to travel overseas; only the necessary formalities related to passports and visas are required.

The omission of subsidiary rules implements in the practice the freedom already enshrined by the Constitution. Notwithstanding some of the Acts which constitute subsidiary legislation can be mentioned as examples.

Civil Code Act, 1/01/1976. Laws of Seychelles 1996.

Article 3: *"Status and capacity shall be governed by such laws as are from time to time enacted. Subject to this provision, capacity shall further be determined by the domicile of a person. Domicil shall be inferred from the fact that a person retains or voluntarily establishes his sole or principal residence in a country with the intention of retaining or making that country the centre of his personal, social and economic interests".*

Article 102. 1: *"The residence of a person shall be the place in which he resides in fact and shall, not depend upon his legal right to reside in a country".*

2. *"Residence or habitual residence shall only be an element to be taken into account by a Court in deciding whether a person has established a claim of domicil".*

• **Right to participate freely in the government of his country. Right to equal access to the public service. Access to public property in strict equality.** **Article 13, ACHPR.**

Is considered by the people of Seychelles that the rights of all members of the human family "are more effectively maintained and protected in a democratic society where all powers of Government spring from the will of the people" (**Preamble of the Constitution, 8th paragraph**).

Accordingly, **Article 24.1** establishes: "*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".*

In **Chapter VII** "Electoral areas, franchise and Electoral Commissioner" the Constitution establishes more specific rules on this issue, such as right to vote, qualification as a voter, funds in relation to election and referendum, registration of different political parties; and the office of Electoral Commissioner.

Article 113: "*A citizen of Seychelles who is registered as a voter [...] shall be entitled to vote [...]:*

- a) *at an election for the office of President;*
- b) *at an election of the members of the National Assembly; or*
- c) *in a referendum held under this Constitution,*
unless any circumstances have arisen which [...] would cause the citizen to be disqualified".

Article 114: "*A person can be disqualified from registration under an Act on the ground of_*

- a) *infirmity of mind;*
- b) *criminality; or*
- c) *residence outside Seychelles".*

Article 115: "*There shall be an Electoral Commissioner who [...] shall not be subject to the direction or control of any person or authority in the performance of his functions"* (Paragraphs 1 and 3)

According to **Article 116** some of the main functions of the Electoral Commissioner are the following:

- a) Be responsible for the conduct and supervision of the registration of voters and of elections and referenda.
- b) To keep under continuous review the practices and working of political campaigns in respect of elections and referenda.

c) To submit reports on the conduct of political campaigns, elections and referendums, together with such recommendations as he may consider necessary for the purposes of ensuring true, fair and effective conduction.

Following the general election, done to configure the National Assembly, a constitutional procedure had been established by formula, for determining the number of member which political parties may appoint to the Assembly. This representation is based on the proportional votes acquired in the general election and the procedure for it is regulated by **Schedule 4 of the Constitution**.

Seychelles places a great deal of emphasis on the education of voters, funding political parties, equity implement of bill boards and day time, and particular support mechanisms to enable the elder and the disable to cast their votes, specific additional time is allowed to enable out-island workers to vote.

The Dispositions of the Supreme Law are supported by the enactment of the correspondent subsidiary legislation:

Elections Act, 20/11/1995.

This is an Act to provide for the election of the President, a directly elected member of the National Assembly, the holding of a referendum and for other matters connected therewith.

Section 5.1: *"Every citizen of Seychelles entitled to be registered as a voter under Article 114 of the Constitution shall, if the citizen resides in an electoral area, be registered as a voter in that electoral area unless the citizen -*

- a) is disqualified from registering as a voter under this Act or any other written law;*
- b) is under any written law, adjudged or otherwise declared to be of unsound mind or detained as a criminal lunatic or at the pleasure of the President;*
- c) is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles.*

2: "No person shall be registered as a voter in more than one electoral area".

Section 11. Presidential election.

Section 12. National Assembly election.

Section 20.1: *"Each candidate may appoint a person to be known as a polling agent to attend at the polling station during voting and a person to be known as a counting agent to attend the counting of votes at the place of counting votes".*

Section 51: Offences.

Section 52: Penalties.

Section 94A: *"Every registered political party nominating candidates and every candidate at an election shall during the period [...] have the right to campaign in the election and to broadcast matter relating to it, with a view to promote or procure the election of any candidate nominated by that party or of the candidate, as the case may be".*

Section 94B.1: *"In the exercise of the right [...] every registered political party and every candidate may, subject to the Public Order Act, hold public meetings with a view to promote or procure the election [...]"*

2: *"In granting permits for the holding of public meetings [...] the Commissioner of Police shall [...] afford equal opportunities to each registered political party or candidate".*

Section 94C.1: *"For the exercise of the right to broadcast [...] the Electoral Commissioner shall, in consultation with Seychelles Broadcasting Corporation [...] allocate free broadcasting time to each registered political party and each candidate".*

2: *"[...] the Electoral Commissioner shall allocate to each political party equal broadcasting time and to each candidate [...]"*.

Paragraphs A, B and C of Section 94 have being added to the section by the "Elections (Amendment) Act, 1996"; which make new provisions for the preparation and certification of electoral registers and to provide for political campaigns and political broadcasts.

Part IV of the Act establishes the procedure to held Referendums.

Elections Act, 1995

Presidential Election and National Assembly Election (Election Petition) Rules, 1998

In exercise of the powers conferred by this Act, the Chief Justice makes the following rules-

Ru1e 1: *"Court means the constitutional court constituted under article 129 of the Constitution.*

"Election petition means a petition presented to the court for the determination of the question as to whether a person has been validly elected to the office of the president or as a directly elected member of the National Assembly as the case may be".

Rule 15.1: *"The Court may declare an election void if the Court is satisfied-*

- a) that there was a non-compliance with the provisions of the law relating to the election and the non-compliance affected the result of the election; or*
- b) that an illegal practice was committed in connection with the election by or with the knowledge and consent or approval of a candidate [...] or of any of the agents of the candidate; or*
- c) that the candidate at the time of the election was not a person qualified to be elected as President or a directly elected member to the National Assembly [...]"*

2: *"The Court may order a recount of ballot papers where [...] is satisfied that there was an irregularity in the counting of ballot papers that affected the result of the election".*

Elections Act, 1995

(From the Official Gazette No 2 of 2003).

Pursuant to Section 8 of this Act, as amended by the Elections (Amendment) Act 1996, all citizens of Seychelles who:

a) On 1st January, 2003 are entitled to be registered as voters [...] and

b) Otherwise qualified to be registered as voters, would attain the age of 18 years on any day within 15 months next following 1st January 2003; are invited to inspect the register of voters prepared under Section 7 of the Elections Act 1995.

Access to public service

In Seychelles the public service covers a wide range of utilities offered to the population, such as water, road transport, electricity, health etc. According to the Constitution and all the national laws, all the citizens on the grounds of other human rights such as non-discrimination, right to dignity, to movement, to health care, to education, etc, have equal access to its labour and material aids. The equality maintained is mirrored in the Public Service Orders and in the “Public Service Code of Ethics and Conduct”

Public Service Orders, June 1996

"The Orders are to be strictly adhered to in order to maintain equity and impartiality in handling personnel matters. Personnel procedures must be uniform and must be well understood by all members of the Public Service. The Orders are intended to provide equitable and impartial answers, read in conjunction with the laws of Seychelles" (Order 1, Introduction).

Public Service Code of Ethics and Conduct, July 2003

Foreword by the President of the Republic

"As part of my Government's new undertaking to the people of Seychelles and the action plan agreed during the visioning exercise that began in 2001, one of the main priorities was stated as: the Government should formulate and promote a new code of ethics which will be enforced without discrimination across the board, and with sanctions for non-adherence."

General Guiding principles:

a) "Public Servants should fulfil their lawful obligations to the Government with professionalism and integrity;

b) Perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues;

c) *Should not bring the Public Service into disrepute through their private activities".*

Access to public property

For the purpose of defining public domain in a way of assuring its general use and accessibility of the whole population to it, the Civil Code establishes:

Civil Code of Seychelles Act, 1/01/1976

Article 538: *"All roads, public highways and streets kept up by a public authority, rivers, streams and springs, the foreshore and banks, beaches which have been gained from the sea and which have been left permanently high and dry, ports, harbours, anchorages and generally all parts of Seychelles which are not capable of being private property, shall be held to be part of the public domain".*

- **Right to property.**

Article 14, ACHPR.

Constitution Article 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 [...] is subject to the following limitations, 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 [...]*
- 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 on 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 administration of the property of persons adjudged bankrupt or of persons who have died or 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 of possession of any property unless:*

reasonable notice of the intention [...] are given to persons having an interest or right over the property;

[...] is necessary in the public interest for the development or to promote public welfare or benefit or for public defence, safety, order morality or health or for town and country planning; there is a reasonable justification [...]; the State pay prompt and full compensation for the property; any person who has an interest or right over the property has a right of access to the Supreme Court [...] for the determination of the interest or right, the legality of the acquisition, the amount of compensation payable, and for the purpose of obtaining prompt payment of compensation".

According to **paragraph 5** of this **Article 26**, The rights in paragraph 1 are extensible to owners who are not citizens of Seychelles:

"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)".

In pursuance to the constitutional rights to own property, there have been enacted additional laws, which preserve this right. The Civil Code, Book II, under the title "Property and the different kinds of ownership", establishes a related regimen of rules.

Civil Code of Seychelles Act, 1/01/1976. Laws of Seychelles 1996.

Article 537.1: *"Persons shall enjoy the free-right to dispose of the property which belongs to them, subject to the restrictions laid down by law".*

2: *"A Clause restricting the right of disposal of immovable property or of a right attached to immovable property shall be valid. However, such restriction shall be subject to two conditions: (a) that there is a serious reason for the imposition of such restriction; and (b) that it shall only be binding upon transferee during his lifetime".*

Article 543: *"Property shall be subject to rights of ownership or to a simple right of enjoyment or to a claim to the benefit of easements thereon".*

Article 544: *"Ownership is the widest right to enjoy and dispose freely of things to the exclusion of others, provided that no use is made of them which is contrary to any laws or regulations".*

Article 545: *"No one may be forced to part with his property except for a public purpose and in return for fair compensation. The purposes of acquisition and the manner of compensation shall be determined by such laws as may from time to time be enacted".*

Article 546: *"The right of ownership of property, whether movable or immovable, shall give the right to everything that the property produces and to anything that accedes to it either naturally or artificially. The right is called right of accession".*

Article 547: *"Natural produce or earnings from land, income from capital, and the young of animals belong to the owner by right of accession".*

Article 26 of the Constitution prescribes some limitations to the right to own property, one of which is that property can be compulsory acquired by government

of the day through reasonable and justifiable conditions. Notwithstanding it also requires a law which would provide for the compulsory acquisition of a property to comply with clause 3 of that Article. In pursuance the Acquisition of Land in the Public Interest has been enacted.

Acquisition of Land in the Public Interest Bill
Objects and reasons

The Bill seeks to make provisions for the acquisition of land in the public interest in accordance with the Constitution.

Where the Minister is of the opinion that it is necessary to acquire any land in the public interest and there is reasonable justification for causing the hardship that may result to persons having interest in the land, the Minister shall publish a notice of intended acquisition. Such notice shall be given the widest publicity by publishing it in the Gazette and in local newspaper and by serving it on persons who on information available to the Minister have an interest in the land. The notice shall state the purpose for which the land is to be acquired.

The persons to whom the acquisition is served may negotiate with the Minister for the sale of the land.

Any person who has an interest in the land sought to be acquired may apply to the Constitutional Court where he claims that the notice of intended acquisition has contravened or is likely to contravene Article 26 of the Constitution. If the Constitutional Court declares such a contravention, the notice of intended acquisition shall cease to have effect. The legality of an acquisition may also be questioned before the Supreme Court within 30 days of the acquisition and, where such acquisition is declared to be non-legal, it shall be void and the Republic would be liable to pay compensation for any loss or damage suffered as a result of the acquisition.

Acquisition of Land in the Public interest Act, 3/06/1996, Laws of Seychelles 1996.

Section 2: *"In this Act, acquire in the public interest, in relation to land, means the acquisition or taking possession of land for its development or utilisation to promote the public welfare or benefit or for public defence, safety, order, morality or health or for town and country planning"*

Section 3.1: *"Where the Minister is of the opinion that it is necessary to acquire any land in the public interest and that there is reasonable justification for causing any hardship to any person who has an interest in the land, the Minister may, subject to subsection 2, acquire the land in accordance with this Act".*

2: *"Nothing in subsection (1) shall be construed as preventing the Republic from acquiring land by agreement otherwise than in accordance with this Act".*

Section 4. Notice of intended acquisition.

Section 7.1: *"Any person who has an interest in the land specified in a notice of intended acquisition may, where the person claims that article 26 of the Constitution has been or is likely to be contravened by the notice of intended acquisition, apply to the Constitutional Court for redress under article 46 of the Constitution.*

2: *"Where [...] the Constitutional Court declares that the notice of intended acquisition [...] is a contravention of article 26 of the Constitution, the notice of intended acquisition shall cease to have effect in relation to that land and any further action taken in relation to that land under this Act shall be of no force or effect and the intended acquisition of that land shall be deemed to have been abandoned".*

Section 8.1: *"Any person who had an interest in a land acquired under section 6 (Compulsory acquisition of land) immediately prior to the notice of acquisition published under that section may, within 30 days after the publication in the Gazette of that notice apply to the Court for the determination of the legality of the acquisition".*

Section 10.1: *"[...] where a land is vested in the Republic [...] the interest of every person in that land immediately before the date of vesting is, on the date of vesting, converted into a right to compensation under this Act".*

Section 12. Claims for compensation

Section 20. Payment of compensation

• **Right to work under equitable and satisfactory conditions and to receive equal pay for equal work.** **Article 15, ACHPR.**

Constitution Article 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 [...] with a view to attaining full employment;*

- b) [...] 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 [...] fair and equal wages for work of equal value without distinction and stability of employment;
- e) to promote negotiations between employers and workers with a view to the regulation of conditions of employment [...]

- f) subject to such restrictions as are necessary in a democratic society and for safeguarding public order, protection of health, 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".

In Seychelles 52.97 percent of the employees work in the private sector and 47.02 percent are employed in parastatal and public jobs. Laws have been enacted to implement the rights of the workers established by this article of the Constitution and in all cases the legislation provides for the procedure to deal with disputes between employers and workers, their appeals and reviews.

The profuse legislation enacted for employment reflects the aim of the government of protecting the rights of the workers in all the spheres. The Employment Act supplies the rules regarding employment in general, together with its Regulations, the Occupational Safety and Health Decree etc, and a specific body of rules for workers on the public sector is been issued: the Public Service Orders.

Employment Act. 3/04/1995, Laws of Seychelles 1996

This Act has been enacted to revise and consolidate the law relating to employment, into line with the policies determined by the Ministry for employment after Consultation with Trade Unions and Employers Organisations, in consonance with the Articles of the Constitution.

According to Section 4, it applies to contracts of employment for service in Seychelles or on Seychelles ship or aircraft and contracts for service in an agency for the government or diplomatic mission of Seychelles abroad.

Section 37. Workers as privileged creditors: *"Notwithstanding any other written law, privileges and rights in respect of wages of servants under Articles 2101, 2104, and 2105 of the Civil Code extend to the wages of all workers, their holiday pay and payments and compensations upon termination of employment [...]"*

Section 40.1: *"The Ministry may after consultation with the Unions, the employers' organisations and such other representatives of workers [...] who are not members of any Union whom the Minister considers it fit to consult, make regulations prescribing –*

- a) the statutory wages to be paid to workers by employers [...]*
- b) the conditions of employment to be provided for workers by employers".*

2: "Regulations under subsection 1.b) may prescribe-

- a) the maximum permissible number of hours of work, normal and overtime in any day or week, rest periods and the number of consecutive hours of rest to which a worker is entitled;*
- b) the number of days of annual leave, maternity leave for the purpose of fulfilling or in connection with any civic duties or unpaid leave and the condition under which such leave may be granted;*
- c) extra rates of payment or time off in lieu or overtime, work on Sundays and other public holidays and exception therefrom;*
- d) the maximum sum which an employer may deduct from the wages to be paid to a worker in respect of the cost of food or housing or both food and housing provided by the employer;*
- e) conditions attaching to the employment of women, trainees, young workers and disabled persons;*
- f) maternity protection benefits;*
- g) facilities to be granted to the worker for training for social, sport and cultural activities;*
- h) generally improved living and working conditions.*

Section 41.1: *"[...] wages are calculated on an hourly basis".*

2: "Wages may be calculated on a task or piece work basis wherever the Minister is satisfied that such calculation will encourage productivity, but where wages are so calculate, the worker shall not receive less than the national minimum wage".

Section 45. Security of wages.

Section 46. Employment benefits.

Part VI "Protection of Employment" includes restriction on termination of contract, restrictions on lay-offs of workers, variation of terms of employment (in any way less favourable to the worker), termination of contract upon change of ownership and redundancy of workers.

Where a change of ownership would result in the termination of employment of a worker, the termination shall be deemed to be for a cause in no way attributable to him and he is entitled to compensation. Compensation must be effected also in cases of redundancy of workers, once followed the previous negotiation procedure established (Sections 50 and 51).

An employer may terminate a contract of employment, with notice, following the negotiation procedure and, without negotiation procedure only in the cases established by the Act. Notwithstanding, notice of termination shall not be given to a worker while he is on sick leave or pregnant or on maternity leave unless the competent officer so authorises (Section 57).

Section 62: *"Where a contract of employment is frustrated [...], or, is terminated by an employer, compensation is payable to the worker, in addition to his wages and any benefits earned [...]"*.

Section 62 A.1: *"Where a worker resigns, (otherwise than for disciplinary reasons) or retires, on completion of not less than five years' continuous service under an employer, compensation for length of service shall be payable to such worker, in addition to the wages and other benefits earned [...]"*

3: *"Where a worker who has completed not less than five years' continuous service dies while in employment, compensation for length of service shall be payable to the legal representative of such worker, in addition to the wages and other benefits earned by the worker [...]"*. Employment (Amendment) Act, 28/10/1999: *"The Act is here amended by inserting after section 62, section 62A"*.

Part XI of the Act regulates the offences, penalties and prosecution to the persons who contravene its dispositions. Specifically Section 76 subsection 2 refers to offences committed by the employers, which might prejudice the workers' rights.

Employment Act.

Employment Regulations, 1/05/1991.

Regulation 3.1: *"An employer shall not require a worker, other than a watchman or a worker on the outer island to work for more than-*

- a) the customary number of hours per week or per day [...];*
- b) the number of hours per week or per day which the Minister may [...] specify in respect of any occupation;*
- c) 60 hours per week or 12 hours per day whichever is the less".*

Regulation 4. Rest periods: *"An employer shall grant to his worker at least 36 consecutive hours rest in any period of 7 days"*.

Regulation 5. Holidays: *"Except in an essential service, an employer shall not require a worker [...] to work on holidays". A worker, [...] who works on holiday is entitled to double-pay for that day, or to an alternative holiday, at the option of the employer.* (Clauses 1, 2).

Other examples of the implementation of the right to work under satisfactory conditions is the establishment of annual, educational and sick leaves for the workers; under Regulations 9, 11 and 12 respectively.

Regulation 24.1: *"The following formula shall apply for the purpose of calculating the wages of a worker whose wage is calculated on an hourly basis-*

$$\frac{\text{Salary per year}}{52 \times \text{weekly working hours}}$$

Regulation 28.1: *"[...], a worker under a contract of employment for work on an outer island, proceeding to or returning from work on the outer island is entitled to free passage and food during the passage for himself and members of his family accompanying him"*.

Regulation 29: *"A worker or any member of his family [...] shall not proceed to outer island where the worker is to be employed unless he has been medically examined and certified fit by a medical practitioner in the service of Government. A fee is not payable in respect of (such examination) or in respect of the certificate issued pursuant thereto".* (Subregulations 1 and 3).

Regulation 34.1: *"During a period of a worker's contract of employment on an outer island the employer shall provide the worker and his family with housing of a good standard and [...] arrange for a sufficient supply of wholesome water for the worker and his family [...]"*.

Regulation 35: *"Every employer of a worker on an outer island shall keep and provide for the use of the worker and his families such first- aid equipment and medicines and such general health facilities as may be recommended by the Ministry of Health. The cost of the equipment, medicines and facilities [...] is borne by the Ministry of Health".*(Subregulations 1 and 2).

Industrial Relations Act, 12/11/1993.

In this Act, Part V seeks to provide for measures which would be conducive to harmonious relationship between employers and employees. Part VI seeks to establish the necessary machinery to resolve industrial disputes. Provisions have also been made for strikes lock-outs and picketing (in

Sections 52 and 53). The proposed offences and the penalties therefor for contravening the provisions of the Bill are contained in Part VII.

Section 37: "*[...] a person who refuses to participate in or [...] to act in furtherance of a strike [...] shall not, by reason of the refusal be subject to expulsion, removal from office [...], any fine or penalty imposed by a trade union, deprivation of any right or benefit [...], any disability or disadvantage [...]*"

Section 51: "*There is established for the purposes of this Act a tribunal to be known as the Industrial Relations Tribunal*".

International Trade Zone Act 1995

International Trade Zone (Employment) Regulations, 1997

These Regulations apply to a contract of employment entered into for service in a zone. They stipulate, kinds of contracts, trainees, wages, employment benefits, retirement age, compensations upon termination, redundancy and upon changes of ownership, etc.

Regulation 17 estates that notwithstanding any other written law, privileges and rights in respect of wages of servants under articles 2101, 2104, and 2105 of the Civil Code extend to the wages of all workers, their holiday pay and other payments or compensations.

International Trade Zone (Employment) Regulations, 1997

International Trade Zone (Conditions of Employment) Order, 1997

Order 3.1: "*An employer shall not require a worker, other than a watchman or a worker on the outer island, to work for more than- the customary number of hours [...] prevalent in the business or occupation [...]; 60 hours per week or 12 hours per day, whichever is the less.*

2: "*The hours referred include an aggregate of a half-hour break per day [...]*".

3: "*An employer shall not required a watchman to work for more than 72 hours per week*".

4: "*An employer of a worker of an outer island shall not require the worker to work for more than 8 hours a day*".

Order 4: "*An employer shall grant to his worker at least 36 consecutive hours' rest in a period of 7 days*".

Order 5 establishes that an employer shall not require a worker to work on holidays. A worker who works on a holiday is entitled to double pay for that day, or to an alternative holiday.

According to Order 6, for a worker who agree or, in exceptional circumstances, is required to work for more than 60 hours per week or 12 per day, overtime is payable.

Orders 7 and 19 stipulate that the employers who contravene or fail to comply with the conditions of employment are guilty of an offence.

The Order also regulates rights such as annual, compassionate, and sick leaves, unfitness for particular duties, maternity leave, minimum employment age and maternity protection (Orders from 8 to 18).

Occupational Safety and Health Decree, 14/12/1978. Laws of Seychelles 1996.

The provisions of the Act has been updated through some modifications introduced by the "Occupational Health and Safety Decree (Amendment) Act of 28/01/1999.

Under the title "Duties", part II the Decree regulates the following:

Section 4.1: *"It shall be the duty of every employer to ensure, in accordance with the Decree and any other written law, the health, safety and welfare at work of all his employees".*

2: *"...those duties include -*

the provision and maintenance of plant and systems of work that are safe and without risks to health;

arrangement for ensuring safety and absence of risks to health in connection with the use, handling storage and transport of articles and substances;

the provision of such information, instruction, training and supervision as is necessary to ensure the health and safety at work of his employees;

as regards any place of work under the employer control, the maintenance of it in a condition that is safe and without risks;

the provision and maintenance of a working environment for his employees that is safe [...]"

The provision of protective equipment for his employees and training them to use such equipment".

Section 6. Duties concerning premises.

Section 7. Duties of designers, manufacturers, importers and suppliers

Section 8: *"It shall be the duty of every employee while at work -*

*To take reasonable care for the health, safety and well being of himself and of other persons who may be affected by his acts or omissions at work; and
As regards any duty or requirement imposed [...] to cooperate [...] so far as is necessary to enable that duty or requirement to be performed or complied with; and"
To use and take care of, such equipment as may be provided by his employer in accordance with the instructions [...]"*

Section 9.1: *"No person shall intentionally, or recklessly interfere with or misuse anything provided in the interest of health, safety or welfare".*

The Act also establishes the "Occupational Safety Board" and "Officials and Health and Safety Representatives", amongst others (Parts III and IV).

Occupational Safety and Health Decree

Occupational Safety and Health (Health and Welfare) Regulations, 1/05/1991

These Regulations apply for the purpose of ensuring the health, safety and welfare of an employee at work, whether he is employed by the government or in the private sector. They are in addition to the provisions of any other written law.

An employer shall comply with these Regulations. They include the specific requirements for cleanliness, overcrowding, temperature and humidity, ventilation, vibration, drainage of floors, sanitary convenience, washing facilities, supply of drinking water, lighting, eating facilities, sitting facilities, accommodation for clothing, lifting, noise, radiation, protective clothing, first aid, medical supervision and evacuation of the sick and seriously injured. (Regulations number 3 to 22).

As a guarantee, Regulation 23 establishes the punishment for those who breach these dispositions: *"An employer who, without reasonable excuse, fails to comply with any of these Regulations is guilty of an offence and liable to a fine of R 20, 000"*

These Regulations are been, not derogated but updated with some amendments by the "Occupational Health and Safety Decree (Amendment) Act 1999" of 28/10/1998. This Amendment has repealed the Schedule of the Regulation and substituted a new Schedule, which regulates amongst others:

1. Classes of dangerous occurrence.
2. Particulars of accidents (dangerous occurrence)
3. List of notifiable industrial diseases.

4. Occupations involving special risks to health.
5. Processes requiring provision of goggles or screens.

The Public Service is the principal executive arm of Government in the fulfilment of national objectives. Therefore, the proper development and utilisation of the human resources available to the Service is of prime importance.

Public Service Orders, June 1996

Order 1.b): *"The Orders contain the general conditions of service for the Public Service of the Republic of Seychelles".*

c): *"Whereas the provisions of these Orders are normally consistent with the legislation, should they be in any way at variance with the terms of any legislation, the terms of such legislation will naturally prevail".*

g): *"It's the duty of all employees to be acquainted with these Orders. The Orders shall be readily available for consultation, and it shall be the duty of Principal Secretaries, Heads of Departments and Divisions to ensure that all employees [...] have access to a copy".*

Order 4.a): *"Where the provisions of these Orders are at variance with the terms of any legislation, the terms of such legislation prevail. These Orders should therefore be read in conjunction with any relevant legislation applying to employees".*

The Orders regulate, amongst others, appointments, promotions, salaries, increments, wages, retirement, termination of appointments, leave, allowances, training, housing, pensions, gratuities and social security benefits.

Grievances/ disputes

A corner stone in the practice of the right to work is the establishment of a mechanism for the workers to claim their rights where they feel that they had been unfairly treated. The procedure to follow would depend on which sector the worker is employed, as the *Employment Act* applies general rules for employment and the *Public Service Orders* has been issued specifically for public sector employees.

- **Private Sector**

The Employment Act establishes a grievance procedure, separately for cases of *termination of contracts*, which is the most serious consequence for persons regarding

jobs, and cases of *disputes*. (Employment Act Sections 61, 62, 64,65 and Schedule I Part II).

Section 2: *"In this Act [...] competent officer means [...] a person authorised by the Minister to act in respect of that matter"*.

Termination of contracts: a worker whose contract of employment is terminated or, who terminates his contract on the grounds of ill treatment or breach of the law, may furnish a grievance procedure with the competent officer. Upon conclusion of the grievance procedure, where the competent officer determines that the termination by the employer is not justified, the worker must be reinstated to his post or another suitable one, or be paid an amount corresponding to one month's wages. In the last case, compensation is payable to the worker, in addition to his wages and any benefits earned.

If the termination has been by the worker and the competent officer determines that it is justified, he is entitled to the payment of one's month salary in addition to any benefits or compensation he may have earned.

Disputes: Whenever a dispute arises between employer and worker and internal dispute procedures for resolving disputes have been exhausted without agreement, they may initiate the grievance procedure before a competent officer. The competent officer shall immediately, upon the grievance being registered, refer the matter to the Union, if any, and the Union shall consult with the employer and worker concerned with the object of resolving the matter by agreement. If within the term established no agreement has been reached or the worker is not a member of a Union, the competent officer shall determine the matter.

Whichever has been the case (termination or dispute) if the worker is still grieved by the approval, decision, or determination of the competent officer, the worker or the Union on his behalf, may register an appeal against it to the Minister. This would be the last stage in the grievance procedure. The Minister, upon an appeal may consult with the Employment Advisory Board before giving the ruling of such appeal

- **Public Sector**

In compliance with the Public Service Orders, Order 120 a), b), an employee who as a result of disciplinary proceeding is aggrieved by reason of a disciplinary punishment has the right of review to the Principal Secretary (Ministry of Administration and Manpower). The Principal Secretary shall appoint a panel, in the first instance, to conduct an enquiry into the complaint and following consideration, convey the decision to the employee.

The employee, after being notified of the decision, may register an appeal to the Minister of Administration and Manpower, who shall make a final decision. However, if he is still aggrieved with the final decision and having exhausted all avenues for finding a solution to the complaint, he may further register the complaint with the *Public Service Appeal Board* (PSAB).

The PSAB is an important key in the achievement of the rights of the workers employed as public officers. Subject to the Constitution, **Article 145.2**, this board *"shall not, in the performance of its functions, be subject to the direction or control of any person or authority"* and it deals with different issues apart of those originated from disciplinary proceedings.

Constitution, **Article 146.1**: *"The PSAB shall bear complaints by persons aggrieved by_*

- a) an appointment made to an office;*
- b) a promotion to an office;*
- c) disciplinary proceedings taken in respect of an officer;*
- d) the termination of appointment of a person who was holding an office;*
- e) any decision relating to the qualification of a person; in the public service".*

3: *The "Board" "may refuse to consider an appeal or complaint where it is of the opinion that it is frivolous, vexatious or trivial or made in bad faith; or the complain has, without reasonable cause, been delayed [...] or it is subject of proceedings before the court"*

Disputes:

In any dispute regarding the interpretation of the Orders, the Principal Secretary of the Ministry of Administration and Manpower shall be the deciding authority in the first instance. An appeal against the interpretation lies with the President whose decision shall be final and conclusive.

Notwithstanding, the employee may further appeal to the relevant institutions as provided by the Constitution such as the Ombudsman, PSAB and may apply for judicial review (Order 5).

Unemployment Relief Scheme Act, 3/04/1995, Laws of Seychelles 1996.

This Act establishes a Scheme to provide employment for unemployed Seychellois on projects approved by the Minister. To encourage them to participate in training Schemes and accept job offers in other sectors. The payments to participants are met from the fund set up under the Act.

Section 4: *"A person shall be eligible to become a participant of the Scheme if the person is a citizen of Seychelles; and is unemployed; and has registered with the Ministry as a person seeking employment"*.

Section 6.1: *"For the purposes of the Scheme, there is hereby established an Unemployment Relief Scheme Fund [...]"*

3: *"There shall be paid out of the Fund (among other expenses) all payments made to participants of the Scheme under this Act"*.

• **Right to enjoy physical and mental health.**
Article 16, ACHPR.

Constitution Article 29: *"The State recognises the right of every citizen to protection of health and to the enjoyment of the highest attainable standard of physical and mental health and with a view to ensuring the effective exercise of this right the State undertakes-*

- a) *[...] to provide for free primary health care in State institutions for all its citizens;*
- b) *[...] to prevent, treat and control epidemic, endemic and other diseases;*
- c) *[...] to reduce infant mortality and promote the healthy development of the child;*
- d) *to promote individual responsibility in health matters;*
- e) *to allow [...] for the establishment of private medical services"*.

The development of health over the past two decades has followed the primary health care approach. The government has put into practice a policy of decentralisation of health services which intends to ensure that every one, in the whole territory including the inner islands, receive medical attention when they are sick. Mahe, the largest and most populated island, is divided in five regions (north, central, south, east and west). Each one of these regions has two or three Health Centres, which makes a total of eleven. The Government is the major provider of

health services, which are tax-financed and free at all points of service and remains a high priority, being the Ministry of Health provided with the second highest allotment in the national budget.

The population structure has 67 % between 15-64 years. The upward movement from a younger to an older population started in 1971 and, during the last years there has been a remarkable reduction of the infant mortality due to the implementation, among others of the antenatal care for pregnant women (99 % of deliveries carried out by trained personnel).

There is a gratuity scheme of vaccination for all the children, which is executed and supervised by personnel of Postnatal Care, with a 100 % of immunization coverage for BCG, DPT3, OPV3, and measles, among others.

The rules to protect and prevent the population against epidemic diseases have been established, and steps are effectively followed whenever any of these situations arise. The most actual example is the measures of the Ministry of Health regarding the apparition of the SARS virus. For this occasion a Health Centre was designated with all the medical personal required to attend the possible casualties and information regarding the illness was propagated in all kind of ways.

Vital Statistics	2001	2002	2003
Infant Mortality Rate (Under one year of age per 1000 Live Births)	13.2	17.6	16.02
Life Expectancy at Birth (Years)	72.5	71.0	72.0
Number of Doctors	97	101	107
Population per Doctor	837	800	747
Number of Dentists	14	13	16
Population per Dentist	5,800	6,217	4,992

The following dispositions founded in the subsidiary legislation are example of how the Government has endeavoured to accomplish with this human right, in congruency with the dispositions of the Constitution.

Public Health Act, 18/01/1960, Laws of Seychelles 1996.

Section 3: *"Every medical officer of health shall take all practicable measures for ensuring cleanliness and sanitation and for the prevention of disease and for the maintenance and improvement of the health of members of the public and in particular shall administer and enforce, as far as practicable all the provisions of this and any other Act relating to public health"*.

Part VII - Notification of notifiable disease.

Section 32: *"The Minister may make regulations [...] to provide for the notification of notifiable disease in remote parts of Seychelles"*.

Section 33.6: *"Every person required by this section to give a notice or certificate who fails to give the same is liable to a fine [...]"*.

Part VIII - Prevention and suppression of infectious disease. This part of the Act regulates among others, prevention of introduction of infectious diseases, removal and isolation of infectious patients and persons likely to be infected and, disinfecting of premises, buildings and vessels.

Part IX - Control of formidable epidemic disease. In this part the Act includes diseases such as cholera, plague, meningitis, typhus, yellow fever, etceteras, and all the measures to be taken by the government, medical officers and the whole population in the event of it.

Medical Appeal Boards Act, 28/12/1977.Laws of Seychelles

This Act applies directly to the work of officers of health. The board has been established to deal with complains and issues of certain legal concern in the practice of the public medicine. The Second Schedule of the Act regulates those specific cases in which an appeal lies to the Board.

Section 4: *"Every person who has been examined medically by or in relation to whom a medical decision or opinion has been given by a government medical officer or a government dentist in any way of the cases set out in the second schedule to this act and who is not satisfied with such examination, decision or opinion shall be entitled to appeal to the board"*.

Medical Practitioners and Dentists Act, 1994. Laws of Seychelles 1996

(Amended by the amendment of 8/10/1998)

This Act establishes as a body corporate the Seychelles Medical and Dental Council, which scope of activities is wider than that for the Appeals Board. It has been established to make provision for the registration of medical practitioners and dentists, their qualifications and disciplinary control and for connected purposes.

Section 4: *"The functions of the Council are-
to monitor the competence and regulate the performance of persons exercising the profession of medical practitioners and dentists in Seychelles for the purpose of promoting and upholding the highest possible standard of medical and dental practices in Seychelles;
to cause to be kept, subject to this Act, a register of medical practitioners and dentists practising in Seychelles;
to investigate allegations of serious professional misconduct and malpractice and take appropriate action in respect thereof"*.

Medical Practitioners and Dentists Act

Medical Practitioners and Dentists (Disciplinary Inquiries) Regulations, 4/09/1995

Regulation 3: *"A medical practitioner or a dentist is guilty of a serious professional misconduct or malpractice if the medical practitioner or dentist-*
a) contravenes any provision of the Code of Practice;
b) displays lack of knowledge, skill or judgement in the professional care of the patient;
c) shows serious disregard for the welfare of the patient".

A complaint against a medical practitioner or a dentist shall be forwarded to the Registrar, who shall submit it to the Council. The Council shall decide if it merits investigation or not. In cases where investigation is required it will refer it to an investigating committee.

The Council may, where it is satisfied on a consideration of the report of the investigating committee, impose disciplinary measures (Regulations 4-8).

Mental Treatment Act, 3/02/1906. Laws of Seychelles 1996.

Section 30: *"In case it shall appear to the judge that the patient has no next of kin who are able to maintain or support him, and that there is no other person willing to pay for his maintenance and that the alleged patient has no means of subsistence available for his maintenance and support, the judge shall charge the treasury with the maintenance of the patient in the form in schedule one"*.

Section 64: *"Any superintendent (Medical Consultant), keeper or attendant or other person employed in the mental hospital in the care, management or treatment of the patients therein, who*

shall be guilty of any act of neglect or cruelty towards any patients shall be deemed guilty of a misdemeanour for a period not exceeding two years".

Prisons Act, 16/12/1991

Section 17: *"Every prison shall have a Medical Officer of Prisons who shall be a government medical officer". He "shall be detailed for duty in the prison [...]" (Clauses 1 and 2).*

Section 24.1: *"Where in the opinion of the Medical Officer [...] or, in the case of emergency, in the opinion of the Superintendent, a prisoner requires treatment in a hospital, the prisoner may be removed to a Government hospital for treatment".*

Pesticides Control Act, 21/03/1996

This Act is been brought into force to regulate the manufacture, distribution, use, storage and disposal of pesticides for the *protection of the public health and the environment* and to provide for matters connected therewith.

Red Cross Society of Seychelles Act, 1991, Laws of Seychelles 1996.

Section 3: *"There is hereby established as a body corporate a voluntary relief organisation to be known as the Red Cross Society of Seychelles".*

Section 4: *"The objects of the Society shall be:*

- a) to contribute to the improvement of health and social welfare, the prevention of disease, the alleviation of human suffering and the promotion of respect for human beings;*
- b) to organise emergency relief services for victims of disasters;*
- d) in the event of an armed conflict, to assist the sick, wounded, civilians, prisoners of war and other victims of such conflict;*
- e) to disseminate and implement the ideals and fundamental principles of the International Red Cross and Red Crescent Movement [...]"*

Private practice of medicine

Most of the private practitioners practice within the ambit of primary treatment, and refer patients to government-run secondary and tertiary care services when required. To guarantee a correct standard of quality in the attention, the Government has established on the Licenses Act the rules by which this service can be offered to the people.

Licenses Act, 31/03/1987, updated in 1996. Laws of Seychelles.

Licenses (Health services) Regulations, 1996

Regulation 3: *"Notwithstanding any other written law [...] no person shall charge a fee or receive any other consideration in cash or in kind for providing health services unless the person holds a license under these regulations to provide health services".*

Regulation 5. Documents to accompany application.

Regulation 6. Bodies to be consulted.

Regulation 7: *"The holder of a license under these Regulations-*

a) Shall comply with the guidelines issued by the Ministry responsible for Health on practices and standards required to be complied with in health care;

b) In the case of dentist or medical practitioner, shall be subject to the Code of Practice approved and issued by the Seychelles Medical and Dental Council;

c) In the case of a nurse, shall comply with the Code of Practice for nurses [...]";

d) In the case of health services, other than those specified, shall comply with the Code of Practice approved and issued by the Ministry responsible for Health".

HIV/SIDA

The HIV and its pandemic are causing devastating consequences in the African continent. The Seychellois nation stands at the beginning of the millennium with one of the best health care systems in the region _ accessible to all its citizens, however this virus has put at risk many years of effort.

The ***"National Policy for the Prevention and Control of HIV/AIDS and STI (Sexually transmitted infections)"***, adopted in 2001, is the proud initiative of the government to combat those diseases. Whilst strives to eliminate new infections in the population, offers solidarity and commitment to better health and social welfare to those who have contracted it.

Amongst the main accomplishments of national efforts since 2001 are:

- A higher level of awareness and knowledge of HIV/AIDS/STI among the population
- Safer blood transfusion
- An increase in the number of condoms distributed
- Improved management of STI
- Noticeable improvement in the political climate and commitment to prevention and control.

The Public Health Act will be reviewed to address the classification of HIV/AIDS under the Act, protection of the rights of persons living with this illness, the penalty for the wilful spread of the HIV infection, and other issues.

Since 2001 the government committed itself to support various aspects of this policy, which would include necessary orders for the availability, distribution and circulation of related drugs, equipment and supplies at affordable cost and exemption of related drugs, equipment and supplies, including condoms from import duty.

Most of these measures despite not being enacted are already implemented with the approval of the Minister of Finance.

Public Finances Act, 1/02/1997. Laws of Seychelles 1996.

In the exercise of the powers conferred by section 8 of this Act, the Minister makes notice of the establishment of the **National AIDS Trust Fund**, on February 2002.

Section 2: *"There is hereby established a Fund to be known as the National AIDS Trust Fund [...]"*.

Section 3: *"The objects of the Fund shall be-
to promote national interest in and commitment to the prevention and control of HIV and AIDS,
and the care of those who are infected or affected [...];
to mobilise resources for HIV and AIDS programmes;
to promote and support national programmes on HIV and AIDS"*.

- **Right to education, and freely take part in the cultural life of his community. Protection of Morals**

Article 17, ACHPR

During the past two decades, education in Seychelles has made considerable progress. Universal access has been significantly achieved, new infrastructures have been built and, since 1991, the process of reconstructing and redefining the education and training system has been accelerated to culminate in the formulation of the policy statement "Education for the Learning Society"

Education is compulsory for the first 10 years of the Primary/Secondary cycle. The literacy rate is 88%. The education structure consists of the following levels:

- I. Early Childhood Education (ECE): Licensed Day Care Centres cater for children from 0 to 3 ½ years and are run by private individuals. Creche Education Program is for the age group of 3 + to 5 + years and is not compulsory.
- II. Primary Education Programme of 6 years is compulsory for all children from 5 + to 11 + years of age.
- III. Secondary Education Program of 5 years caters for students from 11 + to 17 + years. The first four years are compulsory and the fifth year is open to all students who wish to follow it.
- IV. Further Education and Training Programmes consist of a broad range of course in a number of training institutions. Courses are open to Secondary Four and Secondary Five school-leavers as well as mature students.

The number of teachers in Creche and Primary School is 836 (Males 102, females 734). There are 1, 359 serving teachers at present. The number of teachers in 8 Post-Secondary institutions is 216, thus making a total of 1, 648.

Constitution Article 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 [...]*
- b) *to ensure that the educational programs in all schools are aimed at the complete development of the person;*
- c) *to afford [...] every citizen equal access to educational opportunities and facilities beyond the period of compulsory education;*
- d) *to allow, subject to such reasonable restrictions [...] 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".*

Constitution Article 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, morals and 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.*

Education Act, 5/07/1982. Laws of Seychelles 1996.

Section 4.1: *"It is the policy of the Government -*

- a) *to ensure that all Seychellois are offered equal educational opportunities in accordance with their abilities, aptitudes and needs;*
- b) *to ensure that no Seychellois is prejudiced in his or her education by reason of his or her sex, colour or creed;*
- c) *to encourage in Seychellois an awareness of national identity and respect for the individual; and*
- d) *to ensure the progressive development of institutions devoted to education [...] the achievement and maintenance in those institutions of the highest educational standards; and the provision of a varied and comprehensive educational service".*

2: *"For the purpose of implementing Government policy [...] there shall, subject to this Act, be compulsory education for every Seychellois child from the entry age until the child completes S4 or reaches the age of 17 years, whichever occurs first".*

Section 5.1: *"The Minister is responsible for carrying out the Government policy".*

3: *"The Minister may establish codes of conduct in respect of any matter for the purposes of implementing Government policy and, subject to this Act, the codes shall have effect in respect of the matter in respect of which they are established".*

Section 9.1: *"Notwithstanding anything in the Civil Code, the Minister may, by order published in the Gazette, make provision with respect to the compulsory attendance of children at school".*

3: *"Where a child fails or neglects to attend regularly at school [...], each of his parents is guilty of an offence, and is liable to a fine of R1000 and to imprisonment for 3 months, or to such greater amount and period as is prescribed in the relevant order".*

Education Act.

Education (Educational Zones and Compulsory Education) Order, 1/01/1991
(Modified by the Statutory Instrument 48 of 1994).

Paragraph 4: *"A Seychellois child who attains the age of six years on or before the date specified [...] and has not attained the age of seventeen years, shall from the start of Term 1 of the year in which he attains six years, attend regularly at the school specified for the educational zone in which he resides until he has completed S4 or reached the age of 17 years, whichever occurs first".*

Paragraph 6 defines "Residence of child" for the purpose of paragraph 4.

The Order in Schedules II, III, and I establish the "Educational Zones" and the location of the schools for each one of them.

Public Morality

The year 2004 in the Seychelles has been declared as the "Year of Moral Renaissance". The State has always been concerned about the promotion and

protection of morals and traditional values recognised by the community. This is mirrored in some of the following acts:

Seychelles Broadcasting Corporation Act, 20/04/1992.

Section 5.1: *"The functions of the Corporation shall be to provide Broadcasting services for disseminating information, education and entertainment"*

2: *"In the performance of its functions the Corporation shall:*

- a) ensure that its programmes are of a general high standard; cover a wide range of subjects and appeal to the needs and tastes and serve the best interest of the general public;*
- b) ensure that its programmes do not offend against decency, good taste and public morality; and generally do not outrage public feeling or create ill-will between different public groups;*
- c) ensure that news, news features, current affairs and its other programmes are presented impartially, accurately and with due regard to the public interest".*

Penal Code 1/02/1955, updated in 1996

The Code on Chapter XV "Offences against morality" regulates 27 different kinds of offences, such as sexual assault, abduction of women or girls, sexual interference with child, indecent assault, procuring for prostitution, living on earnings of prostitution, incest, display of or traffic in indecent material, etc.

Cultural Values

In the Seychelles culture is propagated and protected not only for the reason that it constitutes an important element of the nation's identity but also because it is considered a key factor in the maintenance and improvement of the tourism's industry. The creation of the National Arts Council is a step in this direction.

National Arts Council of Seychelles Act, 15/10/1990

This Act is updated by the "(Amendment of Schedule) Regulations, 2000".

Section 4.1: *"the Council is the supreme body for coordinating the arts at all levels for all persons in Seychelles with the following functions-*

- to organise, develop and promote the arts in Seychelles;*
- to encourage the continuous participation in the arts in Seychelles;*
- to encourage and foster a spirit of cooperation and the attainment of high standards in the arts;*
- to encourage the appreciation and development of the arts*
- to coordinate calendars and programmes proposed by arts associations;*
- to encourage and support participation in arts events in Seychelles by persons and associations from abroad;*

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to enter into and maintain relations with international organisations likely to grant financial, material or technical assistance for the development of the arts in Seychelles;

to cooperate with international bodies [...] which are specialised in the arts, artistic research, education, or other artistic or related activities; and

to provide advisory and information services to the Government and district authorities on any matters concerned with the foregoing objects".

2: "The Council may do anything which a body corporate may lawfully do and perform which is necessary or helpful to carry out its functions [...]"

- **Protection of the family. Rights of the women, the child and the aged and disabled.** **Article 18, ACHPR.**

Constitution Article 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".

In Seychelles has been established to ensure the protection of the Family, a **Family Tribunal**. The jurisdiction of the Tribunal is set out in Section 78 of the Children (Amendment) Act, 1998 and, as the Act itself establishes, can be extended by the law where it is required to achieve family protection. It will hear, and determine all matters relating to the care, custody and maintenance of a child. To this end all those issues under Matrimonial Causes Act (Cap 124), Civil Code (Cap 33), Maintenance Orders (Attachment of Earnings) Act (Cap 118) and Summary Jurisdiction (Wives and Children) Act (Cap 233) will be heard originally by this Tribunal.

The following Act is an example of other matters, which this Tribunal deals with:

Family Violence (Protection of Victims) Act, 23rd March 2000

This Act is been adopted *"in response to a generally felt need for a law for the prevention of domestic violence. It seeks to empower the Family Tribunal, established under the Children Act, to entertain applications for protection orders under this law, and to make orders that will ensure the protection of members of families and their property against domestic violence"* (Bill, Objects and Reasons).

Section 3.1: *"The Tribunal may, on an application, grant a protection order"*.

2: *"An application for a protection order may be made:*

- a) *by a family member who has been or may be subjected to family violence;*
- b) *where the family member [...] is an adult and is unable to make the application, by the Director of Social Services;*
- c) *where the family member [...] is a child, by a parent or guardian, by a person with whom the child normally resides, by the Director of Social Services; by the child with leave of the Tribunal if [...] has attained the age of 14 years"*.

Section 5: *"Notwithstanding any other written law, no costs shall be allowed in proceedings under this Act"*.

Section 6: *"A person who intentionally contravenes an interim protection order or a protection order shall be guilty of an offence and liable on conviction before the Tribunal to a fine of R 30, 000 or to imprisonment for 3 years or to both [...]"*.

Section 8: *"The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to conduct constituting family violence"*.

The Civil Code of Seychelles, as a subsidiary law to the Constitution, establishes several rules which either in a direct or indirect way protect the family, especially though the obligations of its members. For example the spouses jointly, by mere fact of the marriage, undertake the obligation to maintain and bring up their children, they owe to each other faithfulness, support, assistance and care, the children shall be bound to maintain their father and mother or other ascendants who are in need (in Article 206 the Code makes this obligation extensive to those who are relatives-in-law), a child during his minority owes honour and respect to his father and mother, the authority of the parents shall be exercised in the interest of the child, etc.

Civil Status Act, 22/04/1893. Laws of Seychelles 1996.

Section 40: *"A male person under the age of eighteen years or a female under the age of fifteen years cannot contract marriage [...]"*.

Section 41: *"There is no marriage when there is no consent"*.

Section 42: *"No second marriage can be contracted before the dissolution of the first marriage"*.

Sections 43, 44 and 45: Marriage is prohibited between all ascendants and descendants, and between brother and sister, whether legitimate or natural. Is further prohibited between a man and his niece or a woman and her nephew.

Section 74: *"No fee shall be charged for the publication or celebration marriage. of a marriage in any office. The parties shall further be entitled to receive free of cost a copy of the publication and a copy of the act of marriage"*.

Matrimonial Causes Act, 1/09/1992. Laws of Seychelles 1996.

Part III. Nullity and separation

Section 12.1: *"Subject to this Section, a court may, on an application, grant an order of nullity if: e) the parties to the marriage were not respectively male and female"*.

The Penal Code, 1/02/1955. Laws of Seychelles 1996.

Section 160, stipulates the offence of Bigamy: *"Any person who, having a husband or wife living, goes through a ceremony of marriage [...] is guilty of a felony and is liable to imprisonment for five years"*.

The Code includes several other offences relating to the protection of the family, however, because they concern more specifically the disadvantaged groups, the Articles had been included below.

In the Seychelles the Government has endeavoured to create mechanism to accomplish with the commitment of the Republic of *"to develop a democratic system which will ensure the creation of an adequate and progressive social order guaranteeing food, clothing, shelter, education, health and steadily rising standard of living for all Seychellois"*. (**Declaration of the Constitution, 3rd paragraph**)

As **Article 37** of the Constitution stipulates: *"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"*.

Social Security Act.

Social Security (Benefits) (Amendment) Regulations, 27/01/2003.

New benefits had been approved by these Regulations which, according to regulation 47, establish, amongst others, the rates for-

1. Sickness Benefit
2. Maternity Benefit
3. Injury Benefit
4. Orphan's and Abandoned Child's Benefit
5. Invalidity Benefit
6. Retirement Pension

7. Disablement Benefit.

Number 5 of the "Guidelines to periodic reporting under Article 62 of the African Charter" requires information about what the State is doing to improve the condition of the women, children and disable. The dispositions that have been enacted in Seychelles, some of them since many years ago, are expressions of the effective legal implementation of important rights for the more vulnerable and defenceless persons in the society.

Women

By 2002 women were well represented at all levels of the government. They occupied 37 % of the post of district administrators in the local government, 30 % of the posts as directors general in government, 27 % in Cabinet and 24 % in Parliament.

Constitution Article 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 provided by law before and after childbirth".

Civil Code, 1/01/1976. Laws of Seychelles 1996.

Article 215.1: *"A married woman shall have full legal capacity as she were a femme sole".*

Commercial Code Act, First Schedule, 1/01/1977. Laws of Seychelles.

Article 4.1: *"A married woman shall have full capacity as if she were a femme sole. In particular, she shall be free to engage in commerce without the consent of her husband and shall alone be subject, in respect of her separate property to the insolvency laws".*

Status of Married Woman Act, 3/05/1948. Laws of Seychelles 1996.

Section 4: *"A married woman shall in accordance with the provisions of this act, be capable of acquiring, holding and disposing by will or otherwise of any movable or immovable property in the same manner as if she were femme sole, without the intervention of any trustee or the consent of her husband.*

This Act also regulates, investments in joint names of a married woman and others, remedies for protection and security of separate property, married woman to be liable for the maintenance of her husband, etc (Sections 12, 16 and 23).

Summary Jurisdiction (Wives and Children) Act, 28/10/1963

Section 9. Interim order for maintenance: *"Where on the hearing of an application is adjourned for any period exceeding one week, the court may order that the husband do pay to the wife [...] such weekly or monthly sum [...] for the maintenance of the wife and any child or children in her custody until the final determination of the case"*.

Employment Act.

Employment Regulations, 1/05/1991.

Regulation 16.1: *"A female worker under a contract of continuous employment or [...] under a contract for a fixed term or a part time [...] is entitled to a total of 12 weeks paid maternity leave of which not less than 10 weeks shall be taken after the date of confinement, and to 4 weeks unpaid maternity leave [...]"*. Regulation modified by the "Employment (Conditions of Employment) (amendment) Regulations, 2000".

2: *"Where, whether before or after the period of paid maternity leave [...], a female worker is medically certified as unfit for work on grounds of illness, or of disability arising out of pregnancy or confinement, she is entitled to sick leave [...]"*.

Regulation 18: *"A female worker entitled to paid maternity leave shall not return to work before the end of her entitlement leave and an employer who permits or induces a female worker so to return is guilty of an offence"*.

Regulation 23.1: *"A female worker from the time she is 6 months' pregnant and up to 3 months after her confinement, shall not be employed in overtime work or at night between the hours of 10pm and 5am"*.

2: *"Where at anytime during pregnancy and up to 3 months after confinement, a female worker produces a medical certificate that a change in the nature of her work or duties is necessary in the interest of her health or that of her child, she has the right to be transferred to other work or duties appropriate to her condition without loss of wages"*.

3: *"Where a transfer is not possible [...] the female worker is entitled to sick leave"*.

Public Service Orders, June 1996

Order 32. Employment of women

"All avenues of employment in the Public Service will be open to women who are suitable qualified and there will be no difference between the salary or other terms of service of men and women"

*employees of equivalent qualifications and experience, except that maternity protection shall be granted as provided in these Orders subject to-
special needs of a parent of children below creche going age;
flexible working hours and home based work if requested by a parent falling in category (a)".*

Order 147. Maternity leave

b) "Maternity leave arrangements will apply to all employees regardless of their marital status".

These rights to protect the working women are also included in the "International Trade Zone (Conditions of Employment) Order, 1997", which regulates also maternity leave, maternity leave compulsory and, maternity protection, all in the same way as the "Regulations" of the "Employment Act".

Child

Constitution Article 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 [...] 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 they are exposed;*
- d) to ensure, save in exceptional and judicially recognised circumstances, that a child of young age is not separated from his parents".*

Civil Code Act, 1/01/1976. Laws of Seychelles 1996.

Article 388: *"A minor is a person [...] who has not yet reach the full age of eighteen".*

The Code stipulates the categories of legitimate and illegitimate children and, a procedure to recognise the illegitimate ones. *"Such recognition may take place for the benefit of all children, even if born of an incestuous or adulterous relationship" (Article 335).*

Notwithstanding, in Article 338 the Code establishes that *"the rights of a illegitimate child shall be assimilated in so far as possible with those of a legitimate child"*. Article 731 does not make difference between both categories at the moment of the Succession, *"Succession shall devolve upon the children and other descendants of the deceased [...]"*

Penal Code, 1/02/1955

Section 15: *"A person under the age of seven years is not criminally responsible for any act or omission.*

A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission.

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge".

Sections 162 and 163 of the Code, both on Chapter XVI "Offences Relating to Marriage and Domestic Obligations" state:

Section 162: *"Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of fourteen years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means or support, is guilty of a misdemeanour"*.

Section 163: *"Any person who, being the parent or guardian or other person having the lawful care or charge of any child of tender years and unable to provide for itself, refuses or neglects (being able to do so) to provide sufficient food, clothes, bedding and other necessaries for such child, so as thereby to injure the health of such child, is guilty of a misdemeanour"*.

Chapter XX, under the title of "Special provisions as to duties relating to the preservation of life and health", includes among, others the following disposition:

Section 203: *"It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, [...] to provide the necessaries of life for such child; and he is held to have caused any consequences which result to the life or health of the child [...]"*.

Commercial Code, 1/01/1997. Seychelles Laws 1996.

First Schedule, Article 2: *"An emancipate minor of either sex who wishes to avail himself of the privilege of engaging in commerce [...] shall only be permitted [...] if he has been expressly authorised by the Court"*.

Children Act, 15/07/1982. Laws of Seychelles 1996.

Part II, Maintenance. Duty of Maintenance.

Section 4: *"A person under an obligation, by virtue of the Civil Code or otherwise, to maintain a child must ensure that the child is_*

- a) *given adequate nutritious food;*
- b) *adequately clothed;*
- c) *provided with housing which protects him against bad weather and includes adequate sleeping facilities;*
- d) *protected to the best of that person's ability against illness;*
- e) *not neglected or exposed to danger, in the home or elsewhere, in a manner likely to cause the child unnecessary suffering or injury to health; and*
- f) *if he is under 12 years of age, not regularly or for excessively long periods left in the charge of another child under 12 years of age".*

Section 6.1: *"The father and the mother of a child must each maintain the child in terms of section 4, regardless of whether he or she has custody of the child; and whether he or she is resident in or outside Seychelles".*

Section 6.3 *"[...] a parent who fails to maintain his child in terms of section 4, [...]or who fails to pay the prescribed maintenance; or who fails to comply with a maintenance order or an affiliation order, is guilty of an offence and is liable to imprisonment for 3 years and to a fine of R20,000". (Amendment, Act 9 of 1999)*

In accordance with Article 205 of the Civil Code, this Act in Section 7A.1 establishes that where a person who is under a legal duty to maintain his/her parents and has the means to do so, fails, the Family Tribunal may order the person to pay such sum in such manner as may be specified, for the maintenance of that parent. The Subsection 2 includes as an exception to this duty the cases of parents who had abandoned neglected or ill-treated that person in his or her childhood. (Amendment, Act 9 of 1999)

Section 24.1: *"Where a parent having custody of, or a custodian of, a child is unable to provide proper care for the child; or the child is beyond his control and he so requests, the Director may exercise supervision over the child while the child resides in his home".*

"In this Act [...]Director means the persons for the time being acting in the capacity of performing the functions of head of the Division or Section responsible for children affairs in the Ministry or Department responsible for it "

Section 29.1: *"The Director shall satisfy itself of the well-being of foster children whose care and maintenance is undertaken by foster parents [...]"*

In Part V "Adoption", the Children Act establishes the procedure to this institution, always in the way that most benefits the child. It includes adoption by married couple and by one person.

Section 55.1: *"The Director shall ensure that every protected child is visited from time to time by an officer of the Ministry or department responsible for children affairs, who shall satisfy himself as to the well-being of the child and give such advice as to his care and maintenance as may appear to be needed"*.

Section 56.1: *"If a protected child is being kept or is about to be received by a person who is unfit to have his care; or in a place or environment detrimental or likely to be detrimental to him, the Director may receive the child into his care [...] or take the child to a place of safety [...]."*

2: *Where a child is removed under this section, the Director shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian"*.

In another way of protecting the children, this Act in Part VI "Offences against Children" describes such offences and establishes the penalties for each one of them, through the following sections:

Section 70: Cruelty to children.

Section 71: Children not to be used for begging.

Section 72: Children not to be given liquor.

Section 73: Children not to be given drugs.

Section 74: Children not to be used for witchcraft.

Section 75: Children not to be used for offences.

Part VIII "Juvenile Courts" of the same Act specifically created for cases of children or young persons charged with offences applies special methods of dealing with them, considering their condition of immaturity and vulnerability.

Section 92.1: *"No child shall be prosecuted for any offence except the offence of murder [...]; or on the instructions of the Attorney-General"*.

Section 94.1: *"Notwithstanding any other written law, no child under 14 years of age shall be sentenced to imprisonment" (Section modified by the amendment of 17/06/1998).*

2: *"No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way provided for under this Act"*.

Section 101. *"The Director and the person in charge of an establishment used for the residential care of children shall encourage and make available all reasonable facilities for the parents or*

guardian of a child resident in the establishment to keep in close touch with the child in order to preserve family links by regular visits to the child by the parents or guardian; and, at the discretion of the Director, home visits by the child at weekends or during holidays.

Employment Act, 10 April 1995

Section 20: *"Notwithstanding any written law, a contract of employment entered into by a minor and whereby he is, or is to be, employed is binding upon the minor if attested by the competent officer"*.

Employment Regulations, 1/05/1991.

Regulation 21. Minimum employment age. *"A person shall not have in his employ another of less than 15 years of age. Notwithstanding [...] works schemes may be organised for school children on vacation or holidays and where such schemes have the approval of the competent officer children aged 12 to 14 may participate in them provided the work is of a light nature and subject to such conditions as the competent officer may impose upon giving his approval"*. (Subregulations 1 and 2)

3: *"Notwithstanding regulation(1) children aged 12 to 14 years may, outside school hours, run occasional errands and do odd jobs provided the duties are light and not recurrent"*.

Regulation 22.1: *"A person shall not employ another under the age of 18 years in a hotel, guest house, boarding house any place where tourists are accommodated, restaurants, shop, bar, nightclub, dance hall, discotheque or similar place of entertainment or on a ship or aircraft"*.

2: *"A person shall not employ another under the age of 18 years between the hours of 10pm and 5am"*.

3: *"A person shall not employ another under the age of 21 years in a gaming - house or casino"*.

International Trade Zone (Conditions of Employment) Order, 1997

Order 17: *"A person shall not have in the employment of the person a worker of not less than 15 years of age"*.

International Trade Zone (Employment) Regulations, 1997.

Regulation 7: *"Notwithstanding any written law, a contract of employment entered into by a minor of the age of 15 years or above [...] is binding upon the minor if attested by the Authority and by the Minister after consultation with the Employment Council"*.

National Council for Children Act, 1/01/1981. Laws of Seychelles 1996 (Updated in 1999).

Section 5.1: *"The functions of the Council shall be-*

- a) to promote the welfare of children and family life;*
- b) to provide care and assistance for children in need of care and assistance;*
- c) to provide and administer facilities or provide assistance considered by the Council to be necessary or desirable for the welfare of children;*
- d) to co-operate with other persons, public bodies or other organisations in Seychelles or elsewhere in furtherance of the welfare of children;*
- e) to advise the government on matters relating to children;*
- f) to raise funds in Seychelles or elsewhere to enable it to carry out the aforementioned functions; and*
- g) to undertake any other activities in furtherance of the aforementioned functions".*

Section 12.2: *"The Council shall not be liable to any taxation or duty imposed by law in respect of income, whether gross or net profits, gifts or legacies, or to any duty, fee, rate, cess or other impost under any law".*

Seychelles National Youth Council Act, 1997.

This Act establishes "the Seychelles National Youth Council consisting of various youth organisations functioning in Seychelles. The council will assist in the formulation of national youth policies plan and conduct youth development activities and provide a medium for dialogue between the youth and Government. The Secretary General of the council will co-ordinate the activities of the council and liaise with the Ministry responsible for the youth affairs. The Minister will be empowered to make regulations for carrying into effect the purposes and provisions of the law. (Bill 1997, Objects and reasons).

Section 9: The Council has the following functions:

- a) "to assist in the formulation and revision of the national youth policies;*
- b) to foster among the Seychellois youth spirit of national consciousness, a sense of unity of discipline, respect, understanding, co-operation and harmony through youth work;*
- c) to plan and conduct programmes of activities that would contribute to the moral, cultural, educational economic artistic and physical advancement of the Seychellois youth;*
- d) to uphold and strengthen the voluntary and democratic principles in the youth movements*
- e) to liaise with national youth organisations of other countries;*
- f) to promote international understanding and co-operation*
- g) to provide a medium for a regular dialogue between the youth and government on matter pertaining to youth".*

Aged and disabled.

Constitution Article 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 programmes specifically aimed at achieving the greatest possible development of the disabled*".

Employment Act, 3 April 1995

Section 44. Exception in case of disabled person: *"Where the competent officer is satisfied that a worker or person seeking employment is suffering from some disability which makes it difficult for him to compete on the labour market, the competent officer may issue to him a permit exempting the person who employs him from any regulations made under section 40.1a) (wages to be paid) subject to such conditions as the competent officer deems fit to include in the permit.*

Section 66.1: *"A person who has attained retirement age shall not without the written approval of the competent officer or after such approval has been withdrawn, remain in the employment of, or take up employment with another person"*.

2: *"An employer shall not employ a person who has reached retirement age unless that person has the written approval of the competent officer and such approval has not been withdrawn"*.

The "International Trade Zone (Employment) Regulations, 1997" contemplates the retirement age in its Regulation 40, in the same way.

The creation and maintenance of a Social Security System, together with an improvement on the economy, has allowed, along with other measures, the elimination in the country of the extreme poverty.

Pensions Act, 13/05/1933. Laws of Seychelles 1996.

Section 6.1: *No pension, gratuity or other allowance shall be granted to any officer except on his retirement from the public service in one of the following cases: -*

- a) *"on or after attaining the age of fifty five years, or in special cases with the approval of the President on or after attaining the age of forty five; or the minister on the completion of twenty five years of continuous service with the government of Seychelles [...];*
- b) *in the case of transfer to other public service, on or after attaining the age at which he is permitted by the law or regulations of the service in which he is last employed to retire on pension or gratuity;*
- c) *on the abolition of his office;*
- d) *on the compulsory retirement [...] by which greater efficiency and economy can be effected;*
- e) *on medical evidence [...];*
- f) *in the case of termination of service in the public interest [...];*
- g) *in the case of non-commissioned officers and constables of the police force, on or after attaining the age of fifty –five years or, with the approval of the President at any time after attaining the age of forty five.*
- h) *in the case of a designated officer, [...] if the officer's conditions are not fair and reasonable.*

Section 6.2: *"Notwithstanding subsection (1) or any other written law, a person who is entitled to a pension, gratuity or other allowance under this act shall; [...] be paid on his attaining the age of 55 years"*.

In Seychelles, all persons at the moment of attaining the age of 63 years are entitled to a pension, whether they have been employed with the government or not, even those who never worked.

Pensions (Amendment) Act, 25th May, 1998.

Section 3: *"Subject to Section 6 of the Pensions Act, every person who has left the Public Service before 31st December 1978, with less than 10 years' service shall be paid a special ex-gratia allowance at the rate of R750 for each completed year of such service"*.

Seychelles Pension Scheme Act, 16/01/1991

This Act establishes a pension scheme for workers. Others who wish to join the pension scheme may become members. The sums contributed shall be credited to an account in the name of the member. Under the scheme members will be entitled to receive benefits on reaching retirement age or on permanent migration and on death the spouse or dependants would receive benefits. These benefits will be in addition to any payments under any other pension scheme and the members, shall therefore, receive in the totality an enhanced pension on reaching the retirement age.

Section 3.1: *"There is hereby established the Seychelles pension scheme for the payment under this act of pensions and other benefits in respect of the members of the scheme"*.

2: *"The scheme shall be a body corporate"*.

Section 4: *"Every worker who is a citizen of Seychelles shall be a member of the scheme. Any individual who is a citizen of Seychelles, not being a worker, may [...] become a member of the scheme"*. (Subsections 1 and 2).

Section 5.1: *"In respect of every worker, there shall be paid into the scheme by his employer for each month or part of the month in which he is employed [...] such sum as may be prescribed"*.

5.1A: *"From and after the First day of January 1998, every worker shall pay into the Scheme for each month or part of a month in which the worker is employed, such sum as may be prescribed."* (Subsection inserted by Amendment, Act 29/12/1997).

2: *"Every person other than a worker who becomes a member of the scheme shall pay into the scheme a sum not less than the sum as may be prescribed on each occasion on which he makes such payment"*.

3: *"Any worker may pay into the scheme such sum as he may, in the prescribed manner, elect either as a lump sum or as a periodic contribution or as a monthly contribution deductible from his wages".*

Section 15.1 *"Benefits payable to or in respect of members under this act shall be-*
a monthly pension for life;
pre-retirement death gratuity;
post- retirement death gratuity;
pre-retirement migration allowance;
post-retirement migration allowance;
permanent incapacity allowance for life".

Section 16: *"A member shall be entitled to receive as a benefit, on reaching retirement age a monthly pension for life".*

Section 28: *"The provisions of this act shall be in addition to, and not in derogation of, the provisions of the Social Security Act".*

Social Security Act, 1/01/1988

Section 26.1: *"There is hereby established a fund, to be called the Social Security Fund [...]"*.

Section 3.1: *"Subject to this Act, a person who is employed in Seychelles and receives an emolument in respect of his employment; or employs a person [...] and pays that person an emolument in respect of that employment, shall be liable to pay contribution to the Fund in respect of the emolument in the manner provided and at the rate declared under this Act".*

Section 5: The benefits under this Act are, among others-
"maternity benefit which consists of periodic payments to a woman, who is a person covered, in the event of her pregnancy or confinement;
invalidity benefit which consists of periodic payments to person covered who is partially or totally incapable of work;
disablement benefit which consists of periodic payments to a person covered, being an employed person who, is partially or totally incapable of work [...];
retirement pension which consists of periodic payments to a person covered who is over retirement age;
dependant's benefit which consists of an increase to the personal periodic payments of benefit on account of the dependants of the beneficiary;
orphan's benefit which consists of periodic payments in respect of a child who is an orphan; and
abandoned child's benefit which consists of periodic payments in respect of a child who is abandoned by his parents".

The Section includes also injury and sickness benefits, for persons covered, temporarily incapable of work, as a result of an injury or disease occurring in the course of employment or otherwise.

Social Security (Retirement age) Regulations

Regulation 2: *"the retirement age for the purpose of the Act, shall be 63 years"*.

The subsidiary legislation to this Act includes also Regulations for Contributions, for Benefits, for Retirement Age, and for the Seychelles Pension Scheme.

National Council for the Elderly, Commencement 1/10/1197

Objects and reasons

This Act "seeks to establish the council for the elderly composed of persons who have shown an interest in the welfare of the elderly. The council is a body empowered to coordinate, in collaboration with organisations and other person, all activities necessary or desirable for the welfare of the elderly persons. The council is also empowered to assist organisations to promote and organise projects and income generating activities for the benefit of the elderly. The council's fund will be comprised of donations grants and money obtained from fund raising activities as well as money appropriated under the appropriation act. The accounts of the council will be audited annually. For the furtherance of the objects of this act, the Minister may make regulations" (Bill 1997).

National Council for Disabled Persons Act, 28/03/94

Objects and reasons:

The Council for Disabled Persons is a body empowered to co-ordinate, in collaboration with public and private organisations, all activities necessary or desirable for the welfare of disabled persons [...] may receive grants and donations and raise funds in Seychelles or elsewhere. The accounts of the Council would be audited annually. The Minister would provide the office accommodation and staff of the Council (Bill 1992).

Section 2: *"In this Act disabled person means a person suffering from a physical or mental disability on account of injury, disease or congenital deformity"*.

Section 5.1: The functions of the Council are, among others-

- _ To co-ordinate the activities of public or private organisations and other persons engaged in the welfare or disabled persons;
- _ In collaboration with public or private organisations and other persons, to provide care and assistance, to promote, develop and organise services and programmes for rehabilitation and to provide and secure employment for disabled persons.
- _ To advise the government on education, sports, training programs, employment and vocational training courses to disabled persons.
- _ To assist in the provision of facilities considered by the Council to be necessary or desirable for the welfare of disabled persons.

Section 5.2: *"for the furtherance of the functions the Council may receive grants or donations, raise funds in Seychelles or elsewhere"*.

Section 6: *"The Minister may provide the council with the necessary staff and office accommodation required for the performance of its functions"*.

Public Finances Act, 1996
Share and Care Fund Notice, 1999

Section 3: *"There is hereby established a fund to be known as the Share and Care Fund".*

Section 4: *"The objects of the fund are-*

- a) to promote the spirit and practice of helping people in need*
- b) to involve the people of Seychelles in assisting individuals and groups that may not qualify for assistance under existing government programmes and schemes".*

"The fund shall be administered by a Board consisting of the President and such other members as may be appointed by the President". It shall consist of any money paid into the fund by any person or organisation in or outside Seychelles and any money lawfully accruing to the fund" (Sections 5 and 6).

Rights of Peoples

- **All the peoples shall be equal. Nothing shall justify the domination of a people by another. Article 19, ACHPR.**

Although there is a lot more to do at international level to create a better world for the whole human race, the existence of such small States like Seychelles; subject of international rights and obligations, respected in its rights of sovereignty and self determination, is a vivid example of important achievements of our age. It happens usually that we take for granted things that had been achieved only with innumerable sacrifices through the centuries. Not too long ago the very existence of small nations like ours was impossible. Bigger and stronger nations were always considered it their

right to conquer the smallest and weaker ones, and those that were not strong enough to exercise their right to self determination.

- **Right to existence and self-determination.**
Article 20, ACHPR

The first signs of Seychelles nationalism can be found in the early 1960s, when attempts were made to organize the over exploited workers, who had little hope without a trade union. By that time there was a sector of the population that believed that their interests were no more those of the colonial administration

In a letter in *Le Seychellois* on 16 June 1964 Mr. Albert Rene (President of the Republic, lawyer by then) said:

"When someone acclaims colonialism, when those around us condemn us for our just demands, it is all part of a planned onslaught on our search for freedom. Our path to political liberty and economic viability will not be easy but together we shall achieve the dignity of the Seychellois and our national rights, and together we shall work and sacrifice to build our genuine state in which our economy will be directed and diverted to benefit the people of our country..."

On 28 February 1965, Mr. Albert Rene, addressing a public meeting spoke of the need for self-government and on 1 March, "The People" followed its front-page comment on the issue.

"The People" said: *"The Seychelles People's United Party believes that no real progress will be achieved in this country until we have changed constitutionally. At the moment we are being dictatorially administered by the Colonial Office and the people of Seychelles have no say in the Government. The elected members of Legislative Council have no real say in the measures that this body has to approve..."*

Until we achieve our self-government, voted for the people on the basis of universal suffrage, we will always be kept behind. No development can take place in such oppressive circumstances, and our country will gradually by surely be ruined.

On 29 of June 1976 the independence of the islands was formally recognized through the "Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Seychelles concerning Treaty Succession"; document known as "Seychelles Declaration of 1976".

- **Freely dispose of their wealth and natural resources. Eliminate all forms of foreign exploitation.** Article 21 ACHPR.

In its way to development Seychelles is constantly signing agreements with foreign companies and States, nevertheless always in a way that benefits the Republic, in a sense of respect and proper utilization of the national resources.

Situated in the western part of the Indian Ocean the Seychelles has an extensive exclusive economic zone. An adequate depth, warm temperatures and prolific growing of coral, among others, make its sea, especially on its continental shelf, rich in fish and all kind of sea-life, being this the most important natural resource of the country.

The indiscriminate practice of fishing is not permitted. Foreign vessels may fish only under official authorization and in response to commercial arrangements with favorable economic implications for the nation.

Fisheries Act, 31/03/1987. Laws of Seychelles 1996

Section 3.1: *SFA (Seychelles Fishing Authority) shall prepare and keep under review plans for the management and development of fisheries.*

3: *In the preparation of the plans SFA shall consult with the local fisherman and other person affected by the plan.*

Section 4.1: *The Minister may make regulations prescribing measures for the proper management of fisheries including closed seasons and closed areas, specification of gear that may be used (including the mesh size of nets), prohibited fishing methods and gear, the species, sizes and other characteristics of fish and other aquatic organism that it is permitted or forbidden to catch and schemes for the limitation of entry into all or any specified fisheries.*

Section 6.1: *The Minister may enter into agreements with other States, with intergovernmental organizations and with associations [...]*

2: *The total fishing rights allocated by agreements made under this Section shall not exceed the total resources or amount of fishing permitted to foreign fishing vessels [...].*

Section 24. Offences (For both nationals and foreigners who contravene the dispositions of the Act and under agreements)

As subsidiary legislation to this Act the "Fisheries Regulations" of 31/03/1987 regulates amongst others -

- i) Standard requirements (Regulation 5)

- ii) Conditions for a foreign fishing vessel licence (Regulation 6)
- iii) Conditions for a local fishing vessel licence (Regulation 7)
- iv) Large of the nets (Regulation 10)
- v) Mesh size of traps (Regulation 17)
- vi) Prohibition of the use of spear guns (Regulation 18).

First Schedule of the Act establishes "Zones where Fishing by Foreign Vessels is prohibited"

Business Tax Act, Laws of Seychelles 1996
Updated by Act 23 of 1994

Section 172.1: *"Every company carrying out business in Seychelles, or deriving income in Seychelles shall at all times, unless exempted by the Commissioner, be represented for the purposes of this Act by a public officer being a person residing in Seychelles and duly appointed by the company or by its duly authorized agent or attorney".*

172.2 b): *"The company shall keep the office of the public officer constantly filled"*

d): *"If the company fails to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence and liable to a fine [...]"*

Section 2: *"Commissioner means the Commissioner of Taxes appointed pursuant to Section [...]"*

The Maritime Zones Act, 25/03/1999. Laws of Seychelles

Section 7: *"The sovereign jurisdiction of Seychelles extends and has always extended to the internal waters, territorial sea and archipelagic waters of Seychelles and the sea bed and subsoil underlying, and the air space over, such sea and waters".*

Section 9: *"[...] the exclusive economic zone of Seychelles comprises the areas beyond and adjacent to the territorial sea, having as their seaward limit, a line measured seaward every point of which is at a distance of 200 nautical miles from the nearest point on the baselines".*

Section 10: *"Subject to this Act, Seychelles has, and always had, in relation with the exclusive economic zone-*

- a) *sovereign rights for the purposes of exploration, exploitation, conservation and management of the natural resources;*
- b) *exclusive rights to construct and to authorise and regulate the construction, operation and use of artificial islands, installations and structures [...];*
- d) *exclusive jurisdiction over artificial islands, installations and structures [...]*
- e) *exclusive jurisdiction to regulate, authorise, regulate and control marine scientific research;*
- f) *jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and*
- g) *such other rights and jurisdiction as are recognised by International Law".*

Section 11: *[...] the continental shelf of Seychelles comprises the seabed and subsoil of the submarine areas that extend beyond the limit of the territorial sea throughout the natural prolongation of the land territory of Seychelles to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline [...]"*

Section 12: Subject to this Act, Seychelles has, and has always had, on or over the continental shelf exclusive sovereign rights for the purpose of the exploration and exploitation of natural resources [...]"

Minerals Act, 15/10/1962, Laws of Seychelles 1996

Updated by Act 15 of 1977

Section 3: *The entire property in and control of all minerals in, under or upon any land in Seychelles or in all rivers or streams throughout Seychelles is hereby vested in the Republic and the Republic shall have the exclusive right of prospecting and mining for such minerals.*

Section 8: *The owner of any land in Seychelles shall receive such proportion of royalties or other revenue payable to the Government in respect of minerals won or obtained in, under or upon his land [...].*

• **Right to their economic, social and cultural development.**

Article 22 ACHPR.

Seychelles economic and social progress since independence has been very remarkable. According to the Human Development Report (2003), Seychelles is currently ranked 36th in the world.

The preliminary results of the 2002 Population Census indicate the total population of Seychelles as 81.117 people in 20, 391 households; 86.9 % of the households had access to piped water, 97.1 % to electricity, and 87.5 % to flush toilets. About 90 % homes have television, 71 % a fix telephone line and 21 % cellular phone.

Public Finances Act, 1/01/1997

This Act defines "Public moneys" in Section 2 as, *all revenue, loan and other moneys and all securities whatsoever raised or received by or on account of the Republic.*

Section 3: *Subject to the Constitution and this Act, the Minister has the supervision and management of the Consolidated Fund and other funds established under this Act [...]*

Section 4.3: *The Minister may invest public money [...] and in doing so shall observe utmost good faith and act -*

- a) *with due diligence;*
- b) *with care and prudence; and*
- c) *to the best of ability and skill of a competent investor.*

The Act also institutes the Contingencies Fund (Section 6), the Development Fund (Section 7) and others.

Section 11: *The Minister shall, for the purpose of permitting the Auditor- General to comply with Article 158 of the Constitution [...] transmit to him-*

- a) *the accounts of the Consolidated Fund and other funds under this Act giving full particulars of all receipts and expenditures of moneys accounted for in those funds during the financial year*
- b) *a statement of outstanding guarantees [...]*
- c) *a statement of the assets and liabilities of Seychelles at the end of the financial year [...]*

Constitution

Article 151: *There shall be a Consolidated Fund into which shall be paid all revenues or other moneys raised or received for the purposes or on behalf of the Republic [...]*

Article 152 of the Supreme Law establishes the manners of effecting withdrawals from the Fund, which may be as expenditure charges on the Fund by the Constitution, those authorised by an Appropriation Act or approved by resolution of the National Assembly.

Article 158.1: *There shall be an Auditor-General who shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority.*

3: *The accounts of the Cabinet office, the National Assembly, all government departments and offices all courts and those related to moneys withdrawn from the Consolidated Fund [...] shall be audited and reported on by the Auditor General to the National Assembly [...]*

7: *The Auditor-General shall, in the performance of the functions of the office of Auditor-General, not be subject to the direction or control of any other person or authority [...]*

Investment Promotion Act, 23/12/1994

This is an Act to enable the Minister to grant Certificates of an approval to investors, to specify by regulations the concessions and incentives to grantees of such certificates in order to actively *encourage investment* in Seychelles and for matters connected or incidental thereto.

National Research and Development Council Act, Act 20 of 1980

Section 4: *The functions of the Council shall be -*

- a) *to advise the Government on a national research and development policy [...]*
- b) *to identify research and development facilities consonant with the national development objectives;*
- c) *to ensure the application of the results of research activities to national development and for the welfare of the people of Seychelles;*
- d) *to initiate, support, coordinate and monitor research and development activities of the nation and ensure maximum utilisation of research resources;*
- e) *to maintain relationships with corresponding research and development organizations in other countries [...] etc.*

Development Loans Act, 1/01/1977, updated 31/12/1979. Laws of Seychelles.

Section 3.1: *"Subject to this Section, the Minister is authorised on behalf of Seychelles, to borrow, from time to time, a sum or sums of money for the purpose of financing the Plan or any scheme project or programme for which provision is made in the Plan.*

2: *The Minister shall not [...] borrow any sum of money unless the People's Assembly has, by resolution on a motion by the Minister-*

- a) *approved the borrowing*
- b) *approved the rate of interest (if any)*
- c) *approved the terms of which repayment is to be made*

Seychelles Industrial Development Corporation Act, 1/12/1988

Section 8.1: *"The functions of the Corporation shall be-*

- a) *to develop and manage the development of any place in Seychelles designated by the Government as an industrial zone;*
- b) *To construct buildings for industrial, commercial and other purposes and to sell, lease out, manage [...] those buildings [...];*
- c) *To promote [...] investment in home or cottage craft and manufacturing industries in Seychelles;*
- d) *[...] to invest and home or cottage craft and manufacturing industries in Seychelles.*
- e) *To provide material services, research services and any other services in connection with the development of home or cottage craft and manufacturing industries in Seychelles"*

Central Bank of Seychelles Act, 1/01/1983

Updated by Act 6 of 1986

Section 4: *"The objectives of the Bank are-*

- a) *to regulate the issue, supply and availability of money and its international exchange;*
- b) *to advise the Government on banking, monetary and financial matters [...]*
- c) *to promote internal and external monetary stability;*
- d) *to promote a sound financial structure; and*

e) *to foster financial conditions conducive to the orderly and balanced economic development of Seychelles.*

Protection of Local Agricultural Produce Act, 2/04/1973

Updated by Act 23 of 1976

Section 3: Notwithstanding anything contained in any other Act the Minister may [...] prohibit by order in the Gazette the importation of specified agricultural produce into Seychelles for any particular period and under such conditions as he may impose.

Dispositions in the "Trade Tax Regulations" had contributed efficiently to the implementation of these measures.

Cultural development

Cultural development relates to the right to freely take part in cultural life in Article 17 of the African Chapter, page number 62 of this report.

Constitution Article 39.2: *"The State undertakes to take reasonable steps to ensure the preservation of the cultural heritage and values of the Seychellois people*

After Seychelles became independent one of the commitments of the government was to reinforce the national values of the people and enhance their knowledge of Africa, its culture and traditions. Although the European influence is still very strong, the nation has now a well-defined national identity.

It is correct to affirm that although Seychelles is a very small country, with a small population, it possesses a rich culture. Traditional foods, dances, music, have a particular influence from Indian and Chinese culture. Art in general has been cultivated to the point that the country owns specific forms of artistic expressions.

As a very important step in protecting the national identity of the Seychellois the Constitution has instituted Creole as one of the official languages, and it is included in the public schools programs.

Constitution

Article 4.1: *The national languages of Seychelles shall be Creole, English and French.*

The supreme body for coordinating arts is the National Arts Council, which is a body corporate with the functions of promoting, encouraging and administering arts, including international participation. It is given wide powers to allow it to carry out

its functions fully, including running art shops, providing information services and making grants and providing assistance for arts.

National Monuments Act, 31/07/1980, Laws of Seychelles

Under this Act there is established the National Monuments Board, which has among its principal functions to declare national monuments with the purpose of preserve, repair, restore or insure those.

Section 9 describes the offences under the Act and establishes the penalties to those who breach its dispositions.

- **Right to national and international peace.**

Article 23 ACHPR.

International Peace; Principles of solidarity and friendly relations

Preamble of the Constitution: *"We, the people of Seychelles: Desirous to build a just, fraternal and humane society in a spirit of friendship and co-operation with all peoples of the world. Recognizing the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation for freedom, justice, welfare, fraternity, peace and unity.*

Seychelles is a very young nation, as it was only after the beginning of the XVIII Century that the first inhabitants started to populate the islands, and is even younger as a State. In its very brief period of existence the State has adopted with the aim of keeping fraternal relation with other States, an external politic which can be considered as a neutral foreign policy. In the years when the world was divided into two different political systems, Seychelles maintained good diplomatic relations with countries on both sides.

Seychelles has excellent diplomatic and collaboration relations with such opposite forms of government such as those of USA, France, Cuba and China.

It is use to quote once again **Article 48 of the Constitution.** Referring to Chapter III the Article states: *"This Chapter shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms and a court shall, when interpreting the provision of this Chapter, take judicial notice of _*

- e) *The international instruments containing these obligations;*
- f) *The reports and expression of views of bodies administering or enforcing these instruments;*
- g) *The reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms;*
- h) *The Constitutions of other democratic States or nations and decisions of the courts of the States or nations in respect of their Constitutions".*

Article 163.1: *The functions of the Defence Forces are-*
 b) *to assist in the fulfilment by the Republic of its international obligations;*

Interpretation and General Provisions Act, 6/09/1976. Laws of Seychelles 1996
Updated by Act 14 of 1984.

Section 12: *"A construction of an act which is consistent with the international obligations of Seychelles is to be preferred to a construction which is not".*

Defence Act, 1/01/1981. Laws of Seychelles
 Updated by SI 19 of 1986

Section 34: *The Commander-in-Chief may require any Regular Force, or part thereof, to take part outside Seychelles in any international peace-keeping operation on such terms and conditions as he determines.*

Penal Code, 1/02/1955. Laws of Seychelles 1996
Updated by Act 15 of 1996.

Chapter VIII, Offences affecting relations with foreign States and external tranquility

Section 63: *Any person who [...] publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Seychelles and the country to which [...] is guilty of a misdemeanour.*

Section 65: *Any person who is guilty of piracy or any crime connected with or relating or akin to piracy shall be liable to be tried and punished [...]*

National Peace

Seychelles has always been a quite place for living and visiting. Its society is made up of peoples from a number of regions of the world including Europe, Africa and Asia. They have settled in the islands with no signs of disquiet among them.

Constitution

Article 161: *The functions of the Police are -*

- a) *to maintain law and order in and preserve the internal security of Seychelles [...]*
- b) *to prevent and detect crime in Seychelles and over any other area over which the Republic has proclaimed its jurisdiction; and*
- c) *to perform such other functions as may be prescribed by an Act.*

Article 163.1: *The functions of the Defence Forces are-*

- a) *to defend Seychelles and any other area over which the Republic has proclaimed its jurisdiction;*
- c) *during a period of emergency to provide assistance to civil authorities [...]*
- d) *to perform as directed by the President functions and services of a civil nature so as to participate to the maximum extent in the task of national development and improvement in accordance with or under an Act.*

Police Force Act, 23/11/1959

Updated by SI 41 of 1991

Section 6. Functions of the police: *The Force shall be employed in Seychelles for the maintenance of law and order, the preservation of peace, the prevention and detection of crime, and the apprehension of offenders, and for the performance of such duties police officers may carry arms.*

Defence Act, 1/01/1981. Laws of Seychelles

Updated by SI 19 of 1986

Section 5: *Subject to this Act, the functions of the Defence force are-*

- a) *to defend Seychelles;*
- b) *to assist the civil power, as provided in Section 30 and 32;*
- c) *to perform functions and services of a civil nature as provided in section 33; and*
- d) *to assist in the fulfillment by Seychelles of its international obligations, as provided in Section 34".*

Section 30: *Where the Commander-in-Chief is of the opinion that a situation threatening national security or the preservation of the public order exists to such an extent that the intervention of the Defence Force is required he may call the Defence Force in aid of the civil power.*

Section 32: *The Defence Force or part thereof, shall, at the direction of the Commander-in-Chief, give assistance to the civil power in the event of a civil disaster.*

Section 33: *Where the Commander-in-Chief considers that it is in the public interest to do so, he may require any part of the Defence Force to perform any non-military public service that is capable of being performed by the Defence Force on such conditions as he determines.*

Peace officers (Inner Islands and Outlying Islands) Act, 6/05/1963
Updated by Act 23 of 1976

Under this Act the President, after consulting with the Chief Justice, may appoint peace officers for the inner and outlying islands for the maintenance of law and order.

They shall have power to try some non-serious offences, inflict small fines and impose sentences of no more than 14 days.

Penal Code, 1/02/1955. Laws of Seychelles 1996
Updated by Act 15 of 1996.

Division I of Part II Crimes, of the Code establishes "Offences against Public Order"

• **Right to a general and satisfactory environment. Article 24**
ACHPR.

Paragraph 6 of the **Preamble of the Constitution** includes the *unswaying commitment* of the people to *help preserve a safe, healthy and functioning environment for ourselves and for posterity*

Article 38 of the **Constitution** states: *"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".*

In the Seychelles the protection of the environment goes beyond the safeguarding of human rights. For such a small country, where the economy is basically dependent on tourism, the environment is more a question of national survival or existence, as it is stated in the Preamble of the Constitution: ... *"the People of Seychelles ever mindful of the uniqueness and fragility of Seychelles"*.

The environmental legislation is among the more extended in the Republic and it is constantly improved and updated.

Among more than 260 Chapters contained in the "Laws of Seychelles", 12 of them are specifically legislated for the protection of the ambient -

- Birds' Eggs Act, Chapter 16.
- Bread Fruit and Other Trees (Protection) Act, Chapter 18.
- Coco de Mer (Management) Decree, Chapter 37.
- Environment Protection Act, Chapter 70.
- Fire (Protection) Act, Chapter 80
- Forest Reserves Act, Chapter 83
- Lighting of fires (Restriction) Act, chapter 114
- Pesticides Control Act, Chapter 145 A
- Petroleum Mining (Pollution and Control) Act, Chapter 170
- Plant Protection Act, Chapter 171A
- Removal of Sand and Gravel Act, Chapter 203
- Wild Animals and Birds Protection Act, Chapter 247.

Environment Protection Act, 28/09/1994, Laws of Seychelles 1996

An Act to provide for the protection, preservation and improvement of the environment; for the control of hazards to human beings, other living creatures, plants and property; for ensuring proper co-ordination, implementation and enforcement of national policies on environmental management, for integration of environmental considerations into the development process; and to provide for matters connected with or incidental thereto.

Section 4. The Authority for environment protection and its functions

4.5: *Functions of the Authority are to-*

- i) implement policies and programmes in pursuance of the national objectives on environment protection;*
- ii) co-ordinate the activities of other agencies concerned with the protection of the environment [...];*
- iii) evolve standards for the quality of the environment [...];*
- iv) Commission research and sponsor studies on problems relating to environmental pollution;*
- v) Examine such manufacturing processes, materials and substances as are likely to cause environmental pollution;*
- vi) Identify areas in which any activity shall not be carried out [...]*

- vii) Evolve procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*
- viii) Collect and disseminate information in respect of matters relating to environmental protection;*
- ix) Co-ordinate action required in a state of environmental emergency or any other situation which may pose a serious threat to the environment;*
- x) Prepare manuals, codes or guidelines relating to environmental protection [...]*

Section 5.1: *There is established by this Act the National Environmental Advisory Council*

3: the functions of the Council shall be to-

- a) consider any matter affecting the quality of the environment and report to the Minister;*
- b) advise the Minister on the state of the environment and make recommendations [...];*

Section 6: *The Minister may, on recommendations from the Authority, prescribe standards for -*

- a) quality of air, water or soil [...]*
- b) effluent limitations for existing and new point sources;*
- c) emission of air pollutants [...]*
- d) noise emissions [...]*
- e) odours as are required to preserve and maintain the environment;*
- f) pesticide residues in the environment;*

Section 8. Air

Section 9. Noise

Section 10. Ozone protection

Section 12. Waste

Section 13. Minimization of waste

Part IV Environment impact assessment

Part VI Offences, penalties and procedures.

These years of effort for the preservation of the nature and the environment in Seychelles have not been in vain.

Many near extinct species of flora and fauna have survived in the islands because of the sanctuaries on the smaller islands and the ecological niches on the larger ones.

The seas surrounding the islands contain some of the natures' most spectacular marine species of fauna, flora and coral formations and the Marine National Park is a fascinating world of colour, scenic splendour and incredible variety of sea-dwellers.

- **Independence of the Courts and improvement of national institutions entrusted with the protection of the rights and freedoms in the Charter. Article 26 ACHPR.**

The independence of the courts is crucial in determining whether a fair trial is to be conducted. A Court shall follow only prescribed legal dispositions (the Law) as this avoids discriminatory practices, unfairness etc.

The right to a fair trial and the independence of the Courts are together elements of an important aspect in human life: *justice*.

Therefore the independence of the courts unavoidably relates to the right to a fair trial, referred to in Article 7 of the ACHPR, and Article 19 of the Seychelles' Constitution.

In Seychelles such independence is not only attributable to the courts but also to any kind of collegiate body or authorities appointed to hear and resolve all kind of claims, such as the National Assembly, the Ombudsman, the Electoral Commissioner, the Auditor-General, The Public Service Appeal Board and other Tribunals.

The principles of independence and impartiality are always prescribed under legal dispositions which provide that any of these bodies or authorities shall not be subject to the direction or control of any person or authority in the performance of their functions.

Part V

Duties

It is the duty of every person to respect the rights of others. Rights and duties can not be considered as self-existent categories apart from each other and from human behavior in general, therefore the only possible way to guarantee human rights is the establishment of duties also. For example the right to life is an extension of the duty (or obligation) of not to kill, the right to liberty is enshrined by the prohibition of unlawfully confining someone, the right against discrimination is the duty not to discriminate, the right of the children to be maintained, raised and educated by their parents is at the same time the duty of every parent towards their children, etc.

Having in mind the above it is not necessary to explain in detail the implementation of duties in Seychelles. As already indicated, many of them may be found in the human rights part of this report, especially in respect of the exceptions to those rights.

- **Every individual shall have duties towards his family and society and exercise it with due regard to the rights of others.**
Article 27 ACHPR

Part II of Chapter III "Seychellois Charter on Fundamental Rights and Freedoms" of the **Constitution** is dedicated to "**Fundamental Duties**"

Article 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 fulfillment of the aspirations contained in the Preamble of this Constitution"*

- **To respect and consider his fellow beings without discrimination, safeguard mutual respect and tolerance.**
Article 28 ACHPR

This duty relates to the principles of non discrimination and equal protection of the law (Articles 2 and 3 of the ACHPR) and is enshrined by **Article 27.1** of the Constitution which states:

"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".

The "Discrimination (Employment and Occupation) Convention (ILO No 111)" entered into force for Seychelles on 23/11/2000. Under its article 2 the State has undertaken *"to declare and pursue a national policy designated to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof"*

Accordingly the Employment Act provides for equal conditions of employment and wages for every person. In its section 17 regarding the particulars required to be

furnished by the persons seeking employment, differentiations in regard to race, sex, origin etc are no included. More information can be found in the pages of this Report for article 15 of the ACHPR.

The Supreme Law in **Schedule 2**, paragraph 1 defines Public Service as "*the service of the Government of Seychelles in a civil capacity*"

Public Service Orders, June 1996

Order 99

b) *"It is essential that the Government and the public should have confidence that the political views of the employees do not influence the performance of their duties. Therefore the public interest demands the maintenance of political impartiality by the employees in the discharge of their duties".*

a) *"Employees are expected to serve all members of the public with dignity and respect regardless of their own political affiliation or that of the members of the public".*

Public Service Code of Ethics and Conduct, July 2003

Respect for the Rights of Others:

"In performing their duties, public servants should respect the rights of their colleagues and the public, as well as being responsible for their own performance [...]. This means public servants are expected (amongst other things):

- ♦ *to avoid behavior which might endanger or cause distress to their colleagues [...];*
- ♦ *to respect the privacy of individuals when dealing with personal information;*
- ♦ *not to discriminate against any person because of their gender, marital status, colour, race, ethnic or national origins, age, political opinion, employment status, family status, sexual orientation, ethnicity, disability, or religious or ethical beliefs;*
- ♦ *to respect the cultural background of colleagues and clients in all official dealings;*
- ♦ *To have due regard for the safety of others in the use of departmental property and resources".*

The Code provides guidance also for:

- _ Obligations to the Government
- _ Political neutrality
- _ Performance of duties
- _ Integrity and avoidance of conflicts of interest
- _ Personal behavior
- _ Disciplinary measures, etc.

Education Act, Laws of Seychelles 1996

Leading to the principle of nondiscrimination, the policy of the Government is also implemented by this Act, as we quoted in page 63 of this Report, in the following:

Section 4.1 a) *“to ensure that all Seychellois are offered equal educational opportunities in accordance with their abilities, aptitudes and needs;*

b) *to ensure that no Seychellois is prejudiced in his or her education by reason of his or her sex, colour or creed;*

c) *to encourage in Seychellois an awareness of national identity and respect for the individual”*

• **Article 29 ACHPR. The individual shall also have the duty:**

1. **To preserve the harmonious development of the family.**
2. **To serve his national community.**
3. **Not to compromise the security of the State whose national or resident he is.**
4. **To preserve and strengthen social and national solidarity.**
5. **To preserve and strengthen the national independence.**
6. **To work and pay taxes in the interest of the society.**
7. **To strengthen positive African cultural values.**
8. **To contribute to the promotion and achievement of African Unity.**

Family

Civil Code of Seychelles Act, 1/01/1976, Laws of Seychelles 1996

Article 203: *“The spouses jointly, by mere fact of the marriage, undertake the obligation to maintain and bring up their children”.*

Article 212: *“The Spouses owe to each other faithfulness, support, assistance and care”.*

Article: 204: *“A child is not entitled to enforce by a legal action against his father or mother a right to be set up in marriage or business or in any other way”.*

Article 205: *“the children shall be bound to maintain their father and mother or other ascendants who are in need”.* Article 206 makes this obligation extensive to those who are relatives-in-law.

Article 371: *“A child during his minority owes honour and respect to his father and mother”.*

Article 372.1: *“He shall remain under their authority until his majority or emancipation”.*

2: *“The authority of the parents shall be exercised in the interest of the child”.*

More duties of the citizens regarding their family can be found in the pages of the report for Article 18.

Serve his national community.

The Government firmly believes that national development requires the productive input of all sectors of society. To this end, every effort is made to encourage the

active participation of all citizens who are encouraged to participate actively in civil society organizations which foster development effort, through community participation.

Examples of these organizations include the Seychelles Red Cross Society, the Wild Life Clubs of Seychelles, the Centre for Rights and Development (CEFRAD), the Committee on Awareness, Resilience and Education (CARE), the Alliance of Solidarity for the Family (ASSF), the Seychelles Scouts Association (SSA), and faith communities such as the Catholic and the Anglican Churches, among others.

The following Acts constitute legal examples of the duty to contribute to the national community.

Public Finances Act, 1/01/1997
(Share and Care Fund Notice, 1999)

Paragraph 4: *“The objects of the Fund are-*

- a) *to promote the spirit and practice of helping people in need;*
- b) *to involve the people of Seychelles in assisting individuals and groups that may not qualify for assistance under existing Government programmes and schemes”*

Defence Act, 1/01/1981, Laws of Seychelles 1996.

This Act provides not only for the Regular Force of the Army, Navy or Air Force but also a Reserve Force (Sections 17 and 18)

In accordance with Section 28, members of the Regular Force and the Reserve Force are bound to render service when required for national security or preservation of public order, in cases of civil disasters and, to perform certain services for public interest.

Security of the State

State Security Act, 10/01/1978. Laws of Seychelles 1996:

This Act stipulates among others the crimes of Espionage and similar activities and Harboring spies in Sections 3 and 6 respectively.

Penal Code, 1/02/1955, Laws of Seychelles 1996

Section 39.1: *"A person who-*

- d) levies war, or does any act preparatory to levying war, against Seychelles;*
 - e) assists by any means whatever [...] an enemy at war with Seychelles;*
 - f) instigates any foreigner to make and armed invasion of Seychelles; or*
 - g) forms an intention to do any act referred to in a preceding paragraphs and manifests that intention by an overt act,*
- is guilty of treason and liable on conviction to imprisonment for life".*

Under this title of *"Treason and Other Offences against the Authority of the Republic"* the

Code includes also the following Sections:

Section 40: Concealment of treason

Section 54: Seditious intention

Section 55: Seditious offences

Section 61: Unlawful drilling

Section 62: Publication of false news with intent to cause fear and alarm to public

Section 62A: Defamation of President

Taxes

Seychelles Pension Scheme Act, 16/01/1991

Section 4.1: *"Every worker who is a citizen of Seychelles shall be a member of the Scheme".*

Section 5.1: *"In respect of every worker, there shall be paid into the Scheme by his employer for each month [...] such sum as may be prescribed".*

Seychelles Pension Scheme Act

Seychelles Pension Scheme Regulations, 23/01/1998.

Regulation 2: *"Every worker shall, in respect of every month of part of a month during which that worker is employed, pay R.25 into the Seychelles Pension Scheme".*

Social Security Act, 1/01/1988

Updated in 1996

Section 3.1: *"Subject to this Act, a person who-*

- a) is employed in Seychelles and receives an emolument in respect of his employment; or*
- b) employs a person [...] and pays that person an emolument in respect of that employment, shall be liable to pay contribution to the Fund in respect of the emolument in the manner provided and at the rate declared under this Act".*

Section 33. Person liable to pay contribution or surcharge leaving Seychelles

Section 34. Surcharge for late payment

Section 38. Offences and penalties

Business Tax Act, 1/01/1988, Laws of Seychelles 1996
Updated in 1996

Part III Liability to taxation
Part VII Collection and recovery of tax
Part VIII Penal Provisions and prosecutions

Trades Tax Act, 1/01/1986, Laws of Seychelles 1996

This Act regulates the imposition of taxes over goods imported, goods manufactured in Seychelles and trades tax on services, specifically Section 5 establishes the rates for each one of them.

Goods and Services Tax Act, 15 December 2001
(This Act is expected to be withdrawn in 2006)

“An Act to provide for the levy, assessment and payment of tax in respect of imported goods, locally manufactured goods and services and for connected matters”.

Section 7: *“The Minister may make regulations for carrying into effect the provisions of this Act [...] the regulations may provide for offences and for the imposition of penalties or forfeitures in respect of such offences [...]”* (Paragraphs 1 and 3).

Cultural Values

In Seychelles the safeguarding and promotion of cultural values are enshrined by the Constitution as a human right (Article 39 first paragraph) and also as a duty (second paragraph).

Article 39.2: *“The State undertakes to take reasonable steps to ensure the preservation of the cultural heritage and values of the Seychellois people”*

As has been already mentioned in page 9 of this Report, the Republic is Party to the some of the most important Conventions regarding worldwide protection of cultural heritage. The following are examples:

- Convention for the Protection of the World Cultural and Natural Heritage, Paris 1972 (Acceptance 9/04/80).
- OAU Cultural Charter for Africa, 1976 (Accession 31/08/1977)
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954 (Accession 8/10/2003)

- Convention for the Safeguarding of the Intangible Cultural Heritage (in the process of ratification).
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (in the process of accession).

Part VI

Main problems encountered in implementing the ACHPR

- Limited civic education for the whole population at large. There is a need for more comprehensive civic education programs which include as a priority those who are responsible for their application.
- Although the Government has put into practice a good policy for public health, which had reached good standards, the legislation has not been updated in consonance. There is a need for a more comprehensive health education programs for the population.
- Up to the end of 2003 the Police Force was deficient. As a consequence the security of the citizens was affected. A comprehensive reorganization of the Police Force is under way with the view to addressing the deficiencies.
- Domestic violence, including child abuse, continues to increase although is not tolerated by the government or the courts. Steps are under way by the government and civil society to redress the problem.

Part VII.

Article 25 of the Charter

"States Parties shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter".

Human rights information is indeed promoted in Seychelles. It might happen in the daily life that some rights are more propagated than other does, for example those relate to education, health care, environment protection and human solidarity are constantly found, however all of them in a way or another are accessible to the population.

This task of propagation is not only accomplished by the Government and the official Party but also the Opposition Parties in the exercise of their rights of freedom of expression, freedom of association, of movement etc, contribute quite efficiently in their promotion. They are allowed to organize rallies, meetings, and to publish without proscriptions their own official newspapers.

In general amongst the most common mediums used in Seychelles to disseminate human rights information are-

- a) through the work of NGO's;
- b) by media presentations and articles;
- c) Trade Unions and Employer associations, which encourage member participation and conducting workshops/seminars on human rights aspects of employment;
- d) Citizenship is taught as a subject component in Secondary schools with emphasis on Constitutional aspects of the issue and the concepts of rights and responsibilities.
- e) Periodic educational material is published in newspapers and released in the media via community debate programmes;
- f) National Seminars and workshops are periodically organised on various themes, with relevance in human rights aspects, etc.

Annex

Cases example from the Constitutional Court of Seychelles.

I. Case 1/1999

Noella Lajoie Versus The Government of Seychelles (represented by the AG) and the Attorney General

Petition under Art 46.1 of the Constitution alleging a contravention of Art 18.3 and 18.5 thereof; the respondents have raised preliminary objections under rule 9 of the Constitutional Courts Rules averring that the petition has been filed out of time.

The issue before this Court is whether the 30 days period of limitation should commence from the day she was arrested or the day when she became a free person. If it is the former, the petition is out of time but if it is the latter, the petition has been filed well within time.

The stipulation of a time limit is mandatory and it begins to run from the date of the alleged contravention. However it must not be applied as an instrument to defeat the exercise of a fundamental right if circumstance exists for the application of the principle *lex non cogit ad impossibilia*. The detention of a person *in communicado* is one such obvious circumstances. The petition has been filed on time.

The respondent may therefore file a defence on the petition on merits.

I.1 Case 10/1999

Noella Lajoie Versus the Government of Seychelles, the Attorney General

The petitioner has invoked the jurisdiction of the Court under Art 46.1 of the Constitution alleging contravention of article 18.3 and 18.5 thereof.

The State admits that the petitioner was produced in court 38 hours after being arrested upon a complaint of stealing by servant. The State has discharged the burden accordingly to article 18.3. The State has failed to discharge the burden on article 46.8 and accordingly there has been a contravention of article 18.5 of the Constitution.

In the present case I would consider a sum of RS 5000 to be adequate to compensate the petitioner as an acknowledgment of regret by the State for the failure of its officers to comply with a Constitutional time limit

II. Case 2/1998

The Republic Versus Bernard Georges.

Bernard Georges stands charged with five counts. He has pleaded not guilty to all the counts levelled against him. The defence deplored that in spite of several requests made to the prosecution, it had failed to furnish the defence with a list of prosecution witnesses and their statements. Hence the accused was unable to prepare his defence.

The defendant is seeking that Court's redress for an alleged contravention by the Republic therein of the provisions of the Seychellois Charter of Fundamental Human Rights, namely the rights in Articles 19 and 28 thereof.

Questions for the determination of this Court:

1. Does Art 19.2 Const in particular and the right to a fair hearing in particular oblige the prosecution to furnish a list of witness, their statements...?
2. If the accused person is not entitled to the documents set out in question ... does a failure to furnish them by the prosecution amounts to a contravention of Articles 19 and 28 of the Constitution?

Conclusion: the two referral points may be answered in the following manner:

1. Art. 19.2c) of the Constitution oblige the prosecution to furnish the accused the evidence they have against him.
2. Deliberate denial of disclosure amounts to a contravention or likely contravention of article 19 of the Constitution.

III. Case 5/1997

Philip Simeon, Walter Thelermont Versus Magistrates' Court C, the Government of Seychelles, The Attorney General.

Filled under Art 46.1 of the Constitution... that consequent to an order made by a Magistrate, the provisions of Art 18 and 25 have been contravened in relation to them.

The two petitioners were brought before the Magistrate Court without warrant, upon a "Notice of Motion" and an affidavit from the officer who was investigating criminal charges against the two petitioners (both police inspectors). This Notice of Motion gave notice that prosecution would be move the Magistrate Court for an order preventing the petitioners from leaving the country as there were reasonable grounds to believe that they were making arrangements to leave.

The two petitioners were there brought before the Magistrates Court not upon a summons or warrant, but upon a notice of motion, section 67 of the Criminal Procedure Code.

In conclusion, the order made by the Learned Magistrate was inconsistent with the provisions of the Criminal Procedure Code for Revision, however, though invalid do not contravene Art 25 of the Constitution as the petitioner has not shown the impounding of their passports prevented them form leaving the country in an specific occasion. Hence they were not personally affected to warrant this court to declare a Constitutional contravention. In any event the *Audi Alteram Partem Rule* had been followed.

The petition being time barred, necessarily fails in limine and for the reasons stated above on merits as well.

IV. Case 5/1998

Willy Charles Versus (The Attorney General representing) the Government of Seychelles

Under article 46.1 of the Constitution, the petitioner alleges contravention of articles 16 and 18.2b)-3-5.

He avers that he was arrested and detained at the Police Station and interrogated in connection with a fire which occurred three days before near his residence. He gave statement to the police denying any involvement in the said incident, however he was detained. At the time of his arrest and while in detention he was not informed by the police of his constitutional rights.

In the present case the State has failed to prove that the petitioner was arrested on “reasonable suspicion” of having committed the offence of arson. Secondly, the State has made a qualified admission that the petitioner was not produced before the court within 24 hours of his arrest as required by the Constitution. The reason given for such non compliance has not been set out in the defence or in any of the supporting affidavits.

Taking both these contraventions into account, and on a consideration of the principles applicable to the awarding of damages in Public Law cases... I award a sum of R 10,000 as damages payable by the State to the petitioner, together with costs.

V. Case 9/2001

Alfredo Hugo Kurt Leite Versus the Government of Seychelles , the Attorney General.

Jurisdiction of the Court invoked under Art 46.1 claiming that a notice of intended acquisition served on him by 1st respondent to acquire part of his property amounts to a likely contravention of his right contained in article 26 of the Constitution.

The “Acquisition of Land in the Public Interest Act” (1996) gives an aggrieved person the right to obtain a declaration from this Court as regards the Constitutionality of the intended acquisition.

Respondent:

The purpose of the proposed acquisition was stated as for “Housing development”. No hardship will be caused to the petitioner as the government proposes to acquire only 37.65 % of the property upon payment of full compensation leaving land to the petitioner more than sufficient...The Director of Housing Administration avers that the first phase is anticipated to begin in the last quarter of the year 2002 and the second phase after. The estimated cost of the project is R 10, 530 000.

Hence on a consideration of all these circumstances, the State has discharge the burden of proving that the intended acquisition does not contravene the fundamental right to property guaranteed in article 26.1 of the Constitution.

Accordingly, the petition is dismissed with costs.

VI. Case 10/2001

Roy Nora Versus The Minister of Land Use and Habitat, The Attorney General.

The petitioner has filed a motion for leave a petition out of time. Base on article 46.1 of the Constitution alleging a contravention of the right to property recognized in article 26.1 thereof. The grievance averred is against a notice of intended acquisition of a parcel of land belonging to the petitioner by the Minister of Land... under provisions of the Acquisition of Land in the Public Interest Act 1996.

Rule 4.1 Constitutional Court Rules 1994 establishes 30 days for the petition to be filed. The petitioner, in affidavit filed with the motion depones that the notice of intended acquisition was received by him late. Senior State Counsel submitted that “according to the Ministry, it went out a couple of days after it was dated...”

In exceptional cases, on the application of the principle “*ex non cogit ad impossibilia*” this Court has jurisdiction to entertain a petition filed out of time if “sufficient reasons” has been adduced by the petitioner to purge the default”

As the respondents have admitted a delay in posting the notice... and has not been able to state with certainty as to what the delay was, the deeming provision in Section 55.1 of the Interpretation and General Provisions Act cannot be applied. Accordingly we rule that the petitioner has adduced sufficient reasons for the delay, and in the circumstances retrospectively extend the time of filing of the petition, thereby accepting the petition already filed.

VI.1. Case 10/2001

Roy Nora V The Minister of Land Use and Habitat, the Attorney General

Under article 46.1 of the Const alleging that the acquisition of a part of land belonging to the petitioner contravenes his right to property in article 26 of the Constitution, as it as not done in the public interest.

The petitioner has a dwelling house and a shed thereon. The Minister of Land Use and Habitat, has in terms of section 3.1 of the Acquisition of Land on Public Interest Act 1996, decided that a portion of that land should be acquired to promote public welfare and benefit to eight families residing in adjoining parcels. Supporting the defence the respondents further clarified that the government has no other way of providing those 8 families with alternative access to their properties as there is no suitable land for this project and that the acquisition of the portion of land or the road reserve, would leave the petitioner with part of his land which does not affect the dwelling or the shed.

The main contention of the Counsel for the Petitioner was that the acquisition would promote no public interest, but only Private Interest. He submitted that the promotion of the welfare and benefit of 8 families cannot be considered as being public interest.

Distinguished the terms public interest and public purpose and stated that the former term was wider in scope than the latter. Hence the term public interest being of wider application would include public purpose as well. The proposed acquisition was therefore for a public purpose.

The acquisition of land in the Public Interest is a recognised derogation to the right to property contained in article 26.1 of the Constitution. The function of the Court is however to review whether the Minister exercised his discretion correctly when he decided... and that there was reasonable justification for causing any hardship...

It has been averred by the Ministry that there is no other land on that area to provide an alternative access to the properties of these 8 families, other than over the petitioner's land.

The petition is dismissed. There will however be no order for costs.

VII. Case 8/2001

Philip Amukhobe Imbumi Versus The Republic

Referral from the Supreme Court under article 46.7 of the Constitution, for determination is whether the statutory presumption of trafficking under section 14 d) of the Misuse of Drugs Act contravenes article 19.2 g) of the Constitution.

If the defendant wishes to challenge the allegation that he's a trafficker he must do so during the trial. It would then fall on the accused to prepare his defence...before the presumption operates, the prosecution has to prove that the accused had possession of the drugs and that he had knowledge that what he was possessing was controlled drugs.

The Constitutional protection given to an accused person is from being convicted for an offence upon his own evidence.

Section 14 d) of the Act is no law against a person pleading guilty to confess. For purposes of article 19.2 g) of the Constitution the confessing of guilt conveys self incrimination, however Section 14.2 b) of the Act requires the accused not to confess guilt but to rebut a presumption that he is a trafficker in drugs. Hence it is a provision which gives him an opportunity, not to inculpate himself, but to exculpate himself.

The presumptions in the Act do not relieve the prosecution against an accused person; they do not relieve the prosecution from the task of proving all the elements of the offence beyond reasonable doubt. They simply shift the evidential burden on the accused.

Accordingly the Constitutional presumption of trafficking under section 14.d) does not contravene article 19.2 g) of the Constitution.