

# CONSTITUTIONAL REVIEW COMMITTEE

## REPORT

### ESTABLISHMENT OF COMMITTEE

The Constitution Review Committee (hereinafter referred to as the “Committee”) was established by the President on the 16<sup>th</sup> April, 2008 as an adhoc body to review the 1992 Constitution of Seychelles.

At the conclusion of its work of preparing the Constitution of the 3<sup>rd</sup> Republic the Constitutional Commission expressed the wish that a review of the Constitution be carried out 15 years thence in order to ensure that the Constitution remains in sync with the aspirations of the Seychellois Nation.

One of the declared reasons of the President for setting up the Committee was to make good the wish of the Constitutional Commission.

### MEMBERS OF THE COMMITTEE

The Committee is made up of 11 members. I reproduce below the composition of the Committee as it appears in the letter of appointment of the President.

Mr Francis CHANG-SAM, Attorney-At-Law	Chairman
Mrs Marie-Louise POTTER, Leader of Government Business (or her designated representative)	Member
Mr Wavel RAMKALAWAN, Leader of the Opposition (or his designated representative)	Member
Mr Anthony FERNANDO, Attorney General	Member
Mr Jeremie BONNELAME, Chairman, Constitutional Appointment Authority	Member
Mr Gustave DODIN, Ombudsman	Member
Mr Albert PAYET, Chairman SCCI	Member
Mr Philippe BOULLE, Attorney-At-Law	Member
Mr Bernard ELIZABETH, Chairman, Lungos	Member
Ms Cheryl VENGADASAMY, Speaker, national Youth Assembly	Member
Ms Elizabeth CHARLES, Director International Cooperation, Ministry of Finance	Secretary

In line with their letter of appointment, Mrs Potter designated Mr William Herminie, Attorney-At-Law, and Mr Ramkalawan nominated Mr Bernard Georges, Attorney-at-Law, to serve in their stead on the Committee.

As the Committee progressed with its work certain charges also occurred with regard to the capacity or professional post title of certain members of the Committee. For historical purpose I have set out below the names and current professional capacity of each of the members of the Committee at the time of the drawing up of this report.

Francis CHANG-SAM, Attorney-At-Law	Chairman
William HERMINIE, Attorney-At-Law	Member
Bernard GEORGES, Attorney-At-Law	Member
Anthony FERNANDO, Justice of the Court of Appeal	Member
Jeremie BONNELAME, Chairman, Constitutional Appointment Authority	Member
Gustave DODIN, Ombudsman and Chairman of Human Rights Commission	Member
Albert PAYET, member SCCI	Member
Philippe BOULLE, Attorney-At-Law	Member
Bernard ELIZABETH, Chairman, Lungos	Member
Cheryl VENGADASAMY, Police Officer (SI)	Member
Elizabeth CHARLES, Director International Cooperation, Ministry of Finance	Secretary

I would like to quote from the letter of appointment of the President with regard to the composition of the Committee: “I believe that it (the Committee) should reflect a wide spectrum of society and its members, appointed either in their official or private capacity, as the case may be, the prime consideration being the contribution they can make to this all important national exercise.”

A reference to members in the Report is a reference to the members of the Committee.

### TERM OF REFERENCE

The mandate of the Committee as set out in the President’s letter of appointment was to “conduct a thorough examination of the 1993 Constitution in the light of developments and changes which have taken place and, in the process, make appropriate recommendations to bring it in line with the said developments and changes so as to further secure the attainment of the goals and fulfillment of the aspirations of the people of Seychelles as enshrined in the Constitution.”

The Committee was required to produce, and submit to the President, within 12 months from the 16<sup>th</sup> April, 2008, a Report containing its review of the Constitution and recommendations.

The Committee later sought and obtained a first extension of the 12 month period for the completion of its work. Towards the end of the extended period it sought a second extension.

## PROCEEDINGS

As it can be seen from its composition the members of the Committee all have busy daily work schedule. Some also have to travel overseas as part of their work.

Because of prior commitments of some of its members the Committee was only able to hold its first meeting two months after it was established.

The Committee could only conveniently meet after working hours. It initially met once every fortnight but soon after meetings were held once a week.

Meetings of the Committee were in private. The members had decided to accept only written submissions from the public with the option, should there be any need therefor, of asking any person to come in person before the Committee in order to explain, elaborate or clarify any point in his or her written submission. As it turned out the opportunity for the Committee to consider exercising the option of calling any person for a face to face discussion never arose.

It was at all times in the mind of the Committee to hold public meetings in order to seeking the views of the public on the Constitution. Unfortunately, this proved to be impossible. Constrained by time the Committee had to abandon the idea of public consultative meetings. The Committee still hopes, time permitting, to be able to hold a public meeting in Victoria before submitting the Report to the President or, otherwise, with the President's prior permission, after the submission of the Report. The aim of the meeting is to explain the more important recommendations in the Report.

With the kind permission of the former and present Governor of the Central Bank all meetings of the Committee were held at the Central Bank building. The Committee would like to take this opportunity to record its gratitude for this and other courtesies extended to it by the Central Bank during its term. To those members of the staff of the Central Bank who always made sure that the Committee had a room available for its meetings the Committee wishes also to express its appreciation.

Discussions of the Committee were always open, frank, some times intense but always friendly and at all times motivated by what is best for Seychelles. Members always tried to reach out for a consensus decision. Hence, unless it is stated otherwise, decisions and recommendations in the Report have been approved by consensus. In those rare occasions where there were strong divergence of views decisions were supported by a majority of members and, where it was requested, the minority view is also recorded.

The Committee went methodically through and discussed each provision of the Constitution. However this Report records only the views of the Committee on certain constitutional provisions, or subjects covered by certain constitutional provisions, which, in the view of the Committee, require attention for reasons stated in the Report. Where the Report is silent with respect to any provision then it can be correctly concluded that the Committee is mute not by omission but because the provision meets with its approval both as to form and content.

The Committee has in some instances where it has suggested that amendments be made proposed the wording of the amendments in addition to providing the rational or explanation for proposing the amendment. It has done this firstly so that it can experience for itself how the proposal would fit in the existing scheme of the Constitution and secondly in order to indicate in precise legal language what its proposal is meant to cover.

The Committee recommends most strongly that the President makes this Report public and allows members of the public to have access to it so that the recommendations made may be the subject of public debates and discussions.

# **THE CONSTITUTION**

## **CHAPTER 1 (The Republic)**

### **Article 2-Schedule 1 (National Territory)**

There appears to be some confusion with regard to the names of the islands and their classification into granitic and coralline. In addition account has to be taken of the recently created islands.

It is recommended that the list and names of the islands be re-looked at with regard to their proper names and correct spelling and that the islands are classified into Inner or Outer islands only.

### **Article 4 (National languages)**

The Committee feels that the Constitution having boldly acknowledged in article 4(1) that there are 3 national languages of equal status then the use of all three languages should equally be allowed, as much as possible, for all purposes and in all circumstances. Thus a person should not be deprived of the right to use any of the three languages in a situation where that person cannot communicate in the other 2 languages. Where therefore a law, as it may rightly and legally to do so pursuant to article 4(2), provides for any of the 3 languages to be the official language for a particular purpose that law should not prohibit a person from using any one of the other 2 languages if that person cannot communicate in the official language. Indeed, the law should make provision in such cases for the availability of an official translation service from the other national languages to the official language similar to the one which is operating in court today. It should however be restricted to the translation of a national language into the official language.

In this connection it is suggested that the following be added after the word “purpose” in article 4(2): “provided that the law does not prevent a person who is not capable of communicating in the language specified by the law from communication in any of the other national languages”.

Alternatively in line with the drafting scheme of the constitution, there is added a new clause (3) to article 4 along the line suggested by the proviso above.

## **Article 6-Schedule 2 (Principles of Interpretation)-**

- (a) For consistency it is suggested that throughout the Schedule the word “the” be deleted before the word or expression being defined eg “the Gazette” should read “Gazette”;
- (b) in the definition of “law”,
  - (i) most members feel that the words “and any unwritten rule of law” should be deleted so that we concern ourselves with written laws only and not with the importation into our laws of some ancient, esoteric and totally inappropriate common law principles which could throw the application of some of the provisions of the Constitution into disarray;
  - (ii) in the same definition, the Committee feels that it is necessary to make it clear that with regard to international treaties, although they may have been approved by a resolution of the National Assembly under article 64, it is only when they have been “patriated” into our domestic laws by an Act they can be given effect to but not before;
  - (iii) the Committee is of the view that all laws which provide for derogation from the rights and freedoms under the Chapter III should only a law which is “necessary in a democratic society” and the provisions of the Charter should be amended accordingly.

As a result, the definition of law should read as follows: ““law” includes any instrument that has the force of law but excludes any conventions approved by the National Assembly of Seychelles unless it is passed into law;”

- (c) the correct name of the National Assembly as set in article 77 is “National Assembly of Seychelles“. This should be reflected in the definition of the National Assembly. Accordingly the definition should read thus “ “National Assembly” means the national assembly as established by article 77;”
- (d) the Committee is of the view that Constitutional Appointees and Ministers should be excluded from the definition of “public servants” for the purposes of the Constitution;
- (e) although used in the Constitution the word “Seychellois” is not however defined. The following definition is suggested:“Seychellois” means a citizen of Seychelles”

## **CHAPTER 2 (Citizenship)**

### **Article 7 (Persons continuing to be citizen), Article 8 (Persons born in Seychelles), Article 9 (Limitation on operation of article 8), Article 11 (Person born outside Seychelles after this Constitution)**

The Constitution deals with the issue of citizenship as follows-

- (a) in article 7, it validates the citizenship of all persons who were citizens on the day the Constitution came into force;
- (b) in articles 8, 9 and 11, it provides for entitlement by right to citizenship after the Constitution has come into force for a person born in Seychelles if anyone of the person's parents is a Seychellois;
- (c) in articles 10 and 10A, it makes provision for persons of Seychellois parentage (parent or grand parent) who were born outside Seychelles before Independence Day or after Independence Day but before 5<sup>th</sup> June, 1979 to be eligible to become Seychellois by either registration or naturalization under the law (Citizenship law);
- (d) in article 12, it makes a person who would not otherwise be eligible to become Seychellois under either article 10 or 10A and who marries a Seychellois on or after the coming into force of the Constitution eligible to become Seychellois by naturalization;
- (e) in article 13, it allows for the promulgation of a law which would allow for a person who is not eligible under any other provision of the Constitution to be able to obtain citizenship by naturalization.

The Committee is of the view that there is a need to simplify the law regarding entitlement to citizenship by birth by combining articles 8, 9 and 11. This would do away with repetitious provisions which tend to confuse the law. There would be a need to renumber the provisions. The combined provisions would read as follows:

“A person born of a Seychellois parent on or after the coming into force of this Constitution is a Seychellois.”

Those persons who are eligible to become Seychellois by registration by reason of their Seychellois parentage should continue to be covered by articles 10 and 10A.

**Article 10 (Persons born outside Seychelles before Independence Day), Article 10A (Persons born outside Seychelles after Independence Day but before 5<sup>th</sup> June 1979)**

With regard to persons who are not eligible under articles 10 and 10A to becoming Seychellois by naturalization, the Committee wishes to express its grave concern on the number of persons who have been granted citizenship pursuant to this procedure and recommends most strongly the discontinuation of the practice for, among many others, the following compelling reasons-

- (a) in order to maintain and preserve our existing racial, cultural and demographic balance and harmony;
- (b) in order to permit existing Seychellois to as much as possible have first choice of, and rip maximum benefits from, the natural, socio-economic and other possibilities benefits which Seychelles has to offer as once a person becomes a Seychellois he does so fully and acquires by law the right to claim a share of, and compete for, the birthright of existing Seychellois. All those legal and administrative barriers ( e.g sanction under the Immovable Property (Transfer Restriction) Act to control the alienation of land to foreigners, restrictive areas of investment under the Investment Code Act, or administrative restrictions regarding the issue of licences for certain activities) which have been specifically put in place to protect the Seychellois become totally useless;
- (c) in order to preserve the political birthright of existing Seychellois to control the destiny of Seychelles.

The Committee recommends that instead of granting citizenship as part of an investment package consideration should be given to a re-assessment of our immigration law so as to allow persons who invest in Seychelles certain rights in order to allow them to protect, exploit and enjoy the benefits of their investment without however conferring on them the same rights as a citizen as a result of opening the possibility of ultimately upsetting the harmony and balance of our society. Residency could in certain circumstances also allow investors to avoid certain tax liability in their country of origin. The Committee believes that its recommendation reflects the current practice in many, if most, jurisdictions.

**Article 12 (Marriage to citizen of Seychelles)**

With regard to citizenship in the context of marriage, the Committee recommends in this instance also the use of the modified version of the resident permit explained above. It would allow the spouse to work here and enjoy all the benefits of his/her stay here save those reserved to a citizen. At the same time it will ensure that in the



event of a divorce the person does carry with him/her the right to render other foreign persons eligible to citizenship (through re-marriage) or actually to “grant” citizenship to a person who would otherwise not have been entitled to the same (through birth if the other parent of the child is not a Seychellois).

But if it is decided to continue with the present practice of granting citizenship by naturalization it is recommended that-

- (a) the Constitution circumscribes the law pursuant to which this can be done with regard to the procedure to be followed, the qualifying criteria and the attendant rights conferred on the person who obtains citizenship by this process;
- (b) some of the qualifying criteria that an applicant has to meet are that-
  - (i) he/she must be able to write, read and speak at least one national language reasonably well;
  - (ii) he/she has resided in Seychelles for an aggregate period of at least fifteen (15) years of which half must not have been while he was gainfully employed in Seychelles under a gainful occupational permit (GOP) or as a dependent of the holder of a GOP;
  - (iii) he/she has no criminal record;
  - (iv) he/she is of sound mind and body;
  - (v) he/she has contributed or is likely to contribute to the economic, social, cultural, educational life of Seychelles or the well-being of the citizens of Seychelles;
  - (vi) he/she must not have done or said anything publicly which has brought the name of Seychelles into disrepute or denigrates Seychelles or its people;
- (c) with regard to the procedures for the application-
  - (i) in addition to the Gazette and Nation, the application must also be published in two weekly newspapers;
  - (ii) the photograph of the applicant must also be published;
  - (iii) the grounds on which the applicant is making the application should be set out in extensor in the application.

The Constitution should require that the law provides that any objection put forward to an application must be given due consideration to when processing the application and the deciding authority should only disregard an objection raised for valid reasons which must be stated on record.

Citizenship acquired through this process should have at least the following limits-

- (i) the child of the person who becomes a Seychellois by naturalization should not be entitled as of right to citizenship by reason of being born of Seychellois parentage;
- (ii) the person is disqualified from holding certain public offices, acquiring land without sanction of government, engaging in business activities restricted to Seychellois and voting at national elections.

With regard to obtaining of citizenship through marriage, in the event that the recommendation of the Committee for an extended residence permit does not find favour, the Committee recommends that the same criteria set out above should apply except that in the case where the person has been married to or cohabited with a Seychellois for ten years the 15 years residency should not be required of that person.

### **Article 13 (Acquisition of Citizenship)**

The Committee debated at length the question of revocation of citizenship. The present law on citizenship does not make provision for revocation. The Committee feels that this is one of the mischiefs that the law should cover.

The Committee was alive to the fact that revoking the citizenship of a person who has had to renounce his original citizenship in order to become a Seychellois (because his country of origin does not allow the holding of double nationality) could render the person stateless. It feels however where a person has obtained citizenship by misrepresentation or where a person who has obtained citizenship is engaged in activities which are against the interest of Seychelles or which undermines the Constitution then there should be a right to revoke that person's citizenship.

As a result it is recommended in circumstances that article 13 be amended accordingly

#### **Article 13(1)(a)**

One of the few proposals which the Committee received from the public takes issue with the use of the expression "acquisition of citizenship" in article 13(1) (a). While the Committee is of the view that in legal parlance there is nothing

wrong with the use of the expression it nonetheless endorses the view that another expression should be used instead in order to remove the apparent connotation that one can buy citizenship.

## **CHAPTER 3**

### **Part 1 (Seychellois Charter of Fundamental Human rights and Freedoms)**

#### **Seychellois Charter of Fundamental Human Rights and Freedoms**

The drafting scheme of Chapter 3 is to underscore the pro-eminence of each right and freedom by stating it at the beginning of each article and then only to specify the derogations and exceptions to the right or freedom afterwards. The Committee is of the view however that there is too much a tendency to put emphasis on the derogations and exceptions rather than on the rights and freedoms. The end result of this is that we ( the public), but in particular state institutions, have in effect reversed the order of importance: we have come to view the derogations and exceptions as the norms and the rights and freedoms as exceptions. In practice, the people must therefore always fight, argue and go to court in order to “extricate” what the Constitution has enshrined as theirs by right. Please refer to the right to liberty (article 18) discussed further down for an illustration of this point.

The Committee recommends most strongly that remedial steps are taken post-haste to restore the correct order of priority things. One of these necessary measures and the best protection against the gnawing away at the fundamental rights and freedoms is the establishment of a strong court which is staffed with judges who are unwavering in their commitment to the advancement of human rights and freedoms.

#### **Article 15 (Right to life)**

Some members of the Committee wonder whether there is a need to define life with reference to when does the right becomes an enforceable right.

#### **Article 16 (Right to dignity)**

The Committee observes that although there is no stated derogation to this right yet it is quite possible by the way the court interprets the other articles of the Constitution or other laws to permit in-roads into the enjoyment of this right. The plea for a court committed to protection of human rights and freedoms is repeated here.

### **Article 17 (Freedom from slavery and forced or compulsory labour)**

Some members are of the opinion that the word “necessary” in article 17(3) is not the appropriate word and should be replaced by the word “justified”.

However others expressed the view that as the expression “necessary in a democratic society” is used throughout the Charter it might be best for consistency to retain the word “necessary”.

### **Article 18 (Right to liberty)**

Article 18 (2) read with article 18 (5)

It would seem that the police believe that the right to liberty pronounced in article 18 (1) is an exception while one of the exceptions to that right to liberty set out in article 18 is the norm. As result the police not only state that but also commonly and openly act as if they have the right to detain a person for up 24 hours on week days or 48 hours during the week-end.

The office of the Attorney General and the Courts (to which the people have conferred the guardianship of their constitutional rights) seem to have become silent partners of police in this illicit joint venture to undermine the constitutional right to liberty. Despite this well-known common practice of the police no admonishing public pronouncements by either institution have been forthcoming. On the contrary statements obtained from suspects while in illegal detention continue to be produced in and admitted by the courts.

The Committee recommends the re-introduction of the erstwhile practice of a duty judge of the Supreme Court. The police should be required to apply to, and obtain the approval of, the judge (including the duty judge) whenever they want to detain a person overnight. Article 18(5) should be amended accordingly.

Article 18 (6)

The Committee is of the view that there is too much abuse arising from the interpretation given by the court to the expression “reasonable time” in this clause. The court tends to forget that the article is about the right to liberty and that encroachment on the right must be interpreted narrowly so as to allow maximum enjoyment of the right. As a result trials are not started as expeditiously as they should. Suspects are remanded in custody for long periods. Because there are no proper facilities suspects on remand are kept with and often

treated as convicted persons contrary to article 18 (11) which requires a suspect to be kept separately from convicted persons. This is a clear infringement of the presumption of innocence set out in article 19 (2) (a) of the Constitution.

One suggested solution is to define in a law what reasonable means. This would allow the law to be amended to take account of prevailing circumstances. To achieve this it is proposed that clause 18(6) be amended to read thus:

“A person charged with an offence has a right to be tried within a reasonable time as may be specified from time to time by a law.”

#### Article 18 (7)

It would seem from the interpretation which both the office of the Attorney General and the Court place on article 18 (7) that it is for a suspect person to prove why he should be released unconditionally or on conditions (bail) otherwise he has to be remanded in custody. In other words the right to liberty pronounced in article 18(1) and restated by way of reminder in the opening words of the clause itself becomes an exception and the permitted derogation becomes the norm. It is forgotten that the burden is on the party wishing to curtail the liberty of a person to show on facts presented before the court, and for the court after considering those facts to determine, whether any one or more of the circumstances set out in paragraphs (a) to (f) of clause 18 (7) exists before the person can be deprived of his right to liberty.

The Committee suggests that unless there is a change of situation it would be best to have a Bail Act like in other jurisdictions.

The Committee is of the view that the requirement of seriousness of the offence in clause (7) (b) should be read with and qualify both clause (7) (c) and (d) and clause 18(7) should be amended to reflect this. Thus clause (7) (b) should be deleted and the present paragraph (c) be amended by inserting after the words “grounds” the words “on account of the offence”.

As for the present paragraph (d) it should be similarly amended by inserting after the word “necessity” the words “on account of the offence”.

It is believed and suggested that the issue of welfare of the child should be left to the Children’s Act which covers this point.

#### **Article 19 (Right to a fair and public hearing)**

Article 19(1) fair hearing within a reasonable time

The Committee would like to reiterate the same deep disappointment and dissatisfaction expressed previously in the case of article 18(6) with regard to the blatant disregard and lack of concern by the courts and the arms of the Executive of the right afforded by this and other similar constitutional provisions to suspects and accused in criminal cases. The courts persistently interpret “reasonable time” very elastically and in a way that seems to condone and justify the prolonged delays with which the police and prosecution undertake the prosecution or disposal (as the case may be) of criminal cases.

The Committee however does not recommend for the time being the replacement of the expression “reasonable time” in the text. It acknowledges that the expression was advisedly chosen because it provides for flexibility but is dismayed by the interpretation which the courts have given and continue to give to the expression. Its earnest plea is that the courts should be more mindful of the rights and freedoms of the individuals and less incline to make allowance for the delays and other reasons put forward by the police and prosecution.

#### Article 19(2)(b)

The Committee recommends that this paragraph be amended by inserting after the word “informed” the words “orally and in writing”. The purpose for this is to ensure that there is an actual record made that the person has been informed. As it is now the person charging could comply with this provision by simply saying that he did so as there is no legal requirement for him to also record this fact in writing. The writing would assist in forcing and monitoring compliance.

#### Article 19(3)

While the Committee is not recommending any amendment to the provision it urges however that in implementing the provision the person required to be given a record of the proceedings be given a complete and proper record of the proceedings.

#### Article 19(6)

The Committee is of the view that the reference to article 60 (2) in the provision does not make sense and should be replaced by article 60.

#### Article 19(10)(d)

The Committee is of the view that the use of the word “awarded” in the expression “punishment awarded” is infelicitous and should be replaced by the word “imposed”.

#### Article 19(13)

The Committee also recommends the deletion of the word “serious” in the expression “serious miscarriage of justice” as the word is redundant because a miscarriage of justice is always a serious matter. It otherwise gives the impression that there are degrees of miscarriage of justice and some of them need not be rectified or compensated.

Secondly, the Committee strongly recommends that the law providing for compensation by the state to those who have been victims of miscarriages of justice and referred to in the clause be promulgated as soon as possible.

### **Article 20 (Right to privacy)**

#### Article 20(2)

It is recommended that the words “necessary in a democratic society” be inserted after the words “any law” in the opening paragraph of the clause because as worded it allows for the passing of a law which would allow the authority to do anything which could curtail the right of privacy.

If the amendment proposed above is accepted then the base of the clause starting with the words “except so far” and ending with the words “democratic society” can be deleted because the proposed amendment would cover the words deleted.

#### Article 20(2)(a)

The Committee recommends the deletion of the words “the administration of Government” and “well being of the country”. Both expressions are too vague and open-ended. The article is concerned with a fundamental right and the restriction imposed with regard to its enjoyment must be clear, precise and unambiguous

When considering the article the Committee members expressed its concern about the provisions of the National Drugs Enforcement Act, 2008 pursuant to which an agent of the Agency can enter and search premises without having to identify himself. Members were of the view that this and other similar provisions of that law are not consonant with laws necessary in a democratic society.

### **Article 22 (Freedom of expression)**

The principal concern of the Committee under this article is the issue of radio. The Committee notes the prohibitive fee required to be able to obtain the licence

or permission to operate a radio station and questions if the legal provision requiring the same is necessary in a democratic society. The Committee recommends that the laws be passed to facilitate the opening up of radio stations here.

Article 20(2) (e)

The Committee recommends the insertion of the word “internet” in the paragraph.

### **Article 23 (Right to assembly and association)**

The Committee endorses the finding and recommendation in the Report of the Committee on Law and Order relating to public meetings. It recommends the implementation of the recommendations in the Report. It is of the opinion that there is no need to ask for permission to hold a public meeting but that depending where the meeting is proposed to be held there may be a need to inform the police before hand of the meeting.

### **Article 24 (Right to participate in Government)**

The Committee discussed the issue of security clearance, the apparent abuse thereof by the authority and wonders whether it should still have a place in the context of Seychelles today.

Article 24 (2)

In relation to the above-referred clause and the reference to a law which would “regulate” the exercise of the right set out in article 24 (1), the Committee is of the view that if this is a reference to the Elections Act that Act tends to restrict rather than regulate the exercise of the right concerned.

The actual exercise of the right to participate in government is to be found in article 114. In considering article 114 it is necessary to bear in mind article 24.

### **Article 25 (Freedom of movement)**

Article 25 (4)

The Committee’s principal concern here is that should a person be extradited from Seychelles if that person were to face death penalty in the event that he is



convicted in respect of the crime for which he was extradited. The Committee is of the view that the proposition that Seychelles would not violate the article if in the circumstances the requesting state gives an undertaking that it will not carry into effect a sentence of death is not good enough because Seychelles does not have sufficient leverage to bring pressure to bear on a state which reneges on its undertaking not to carry into effect a sentence of death after obtaining an extradition.

As a country which has abolished death penalty Seychelles should ensure at all cost that no such sentence is meted out to a person who Seychelles is responsible for his rendition. Unfortunately article 25(4) as presently worded and the Extradition Act allow for the possibility that a person who has been extradited may have to face death penalty in the country to which he has been extradited. The Committee recommends that this possibility be eliminated altogether by deleting from the clause all the words starting with “unless that country” right up to the end of the clause. The result is that Seychelles would only consent to an extradition to a country where there is no death penalty.

#### Article 25(5)

Firstly, the Committee recommends that the expression “competent authority” in the provision be replaced by a “court or tribunal”. The main argument for this is that the issue is principally a legal one as it involves a constitutional and legal right and should therefore be dealt with at a judicial rather than a political or administrative level as the use of the present expression “competent authority” may be interpreted to say.

Secondly, following the query raised by some of the members of the Committee as to whether a person who is contesting his extradition from Seychelles should be allowed to stay here until the final determination of any legal or administrative process so that he can assist with any representation, the Committee suggested 2 possible solutions to this-

- (a) that the law dealing with this issue provides that the a person aggrieved by a decision or order of removal has the right to remain in Seychelles until the final determination of the matter, or
- (b) the law provides for the right of the person to return and enter Seychelles in order to assist with any necessary representation.

The Committee leaves the matter to be decided by the proper authority although it recognizes that the second option may practically turn out not to be an option after all as the person may never get the chance from country where he was sent to come back to Seychelles.

## **Article 26 (Right to property)**

### Article 26(2) (d)

The Committee recommends the deletion of the word “serious” in the paragraph. The presence of the word serious simply adds to the ambiguity and debate and may in the end only prolong the proceedings before the courts.

### Article 26(3)(d)

As the law stands if a person is dissatisfied with the amount of compensation proposed by the Government in respect of a property which has been acquired it is for that person to go and challenge this before the court. The Committee is of the view and recommends that since it is Government which is interfering with a constitutional right the onus should be on Government to prove to the court that the compensation offered is indeed “full” compensation as demanded by the Constitution. An added reason for this is that the Government already has at its disposal an administrative apparatus and qualified personnel and it is easier and less costly for the Government to satisfy the burden of proof than it is for an individual who is often financially handicapped.

The Committee also recommends that the Acquisition of Land in the Public Interest Act be amended to permit both parties to refer a case to the court when there is a breakdown in the negotiation for compensation.

### Article 26 (4)

The Committee is of the view that the option to buy should be at a price which is not more than the amount of compensation which Government paid when it acquired the land.

## **Article 27 (Right to equal protection of the law)**

### Article 27 (1)

For consistency and logically also the Committee recommends the insertion after the word “as” of the words “provided by a law as”.

## **Article 28 (Right of access to official information)**

The Committee has the following 2 general observations in the context of this fundamental right-

- (a) that there are a number of governmental authorities and bodies which are presently retaining information in respect of people, or refusing to disclose personal information to persons entitled to, without lawful authority;
- (b) that information is being used without legal authority for cross purposes throughout the government and governmental circle and not for the original purpose for which it was collected, given or allowed, contrary to article 28(4) of the Constitution.

#### Article 28(4)

The Committee is of the view that this provision as presently worded is confusing and can be a source of much litigation and dispute. The access by the public to information should not be in contravention of the right to privacy of others (the public should not be able to access personal information about other people in the possession of a public authority). There must therefore be certain restrictions imposed to access to public information. But the restrictions imposed on the access to public information must be those which are necessary in a democratic society.

Accordingly it is proposed that the clause be replaced by the following:

- “(4) The State recognizes the right to access by the public to information held by a public authority performing a governmental function subject to limitations and procedures as are necessary in a democratic society which may be prescribed by law, including-
  - (a) for the protection of national security;
  - (b) for the prevention and detection of crime and the enforcement of law;
  - (c) for the compliance with an order of a court or in accordance with legal privilege;
  - (d) for the protection of privacy or rights or freedoms of others.”

The Committee strongly recommends that serious effort be made by the Government in order to cause laws such as the one referred to in article 28(4) to be enacted in order to bring closure to the constitutional exercise which started fifteen years ago.

### **Article 29 (Right to health care)**

Article 29 (c)

It is recommended that the word “reduce” be replaced by “prevent”. The word prevent implies a more precautionary and pro-active involvement than reduce which implies more of a mechanical measure being undertaken.

### **Article 30 (Right of working mothers)**

It is suggested that after the words “ensure that” the following be inserted “mothers are afforded protection necessary for their welfare and the welfare of the child and that”

The purpose of this amendment is to recognize that all women as mothers, and not just mothers who are employed or engaged in a job, need protection in order to ensure and guarantee the survival of the nation and its future.

It is also recommended that a comma be inserted after the word “law” for obvious reason.

### **Article 31 (Right of minors)**

In the opening of the article it is recommended that the expression “children and young persons” be replaced by the word “minor”, which is more apt and precise. This same amendment should also in paragraph (c).

Article 31(a)

It is recommended that the words “not less than” be inserted before the word “fifteen”. This would allow more flexibility to raise the minimum age if required in the future. By fixing the minimum age at 15 one would need to go through the difficult and long process of amending the Charter before one can raise the age to above 15.

Article 31 (d)

It is recommended that the words “judicially recognized” be replace by “judicially determined” as the court determines and does not recognise and the words “child of young age” by the word “minor” for reason given above.

## **Article 36 (Right of the age and the disabled)**

Article 36(b)

It is recommended that there is inserted after the words “development of the” the words “aged and the”. The reason is to correct an obvious mistake as the article deals with both the aged and disabled whereas this paragraph by omission deals with only the disabled.

## **Part II**

### **Fundamental Duties**

#### **Article 40 (Fundamental Duties)**

The Committee endorses the provision as written.

## **Part III**

### **State of Emergency and savings**

#### **Article 43 Restrictions of Rights and Freedoms during a period of emergency)**

Article 43 (3)

The Committee recommends that the constitutional provisions against which there should not be derogation are articles 18 (10) (entitlement to compensation for unlawful arrest or detention), articles 18 (12) (obligation to keep a minor while in detention separate from adults) and article 18 (13) (obligation to keep a person of feminine sex separate from males while in detention). The Committee feels that there is no valid reason to allow derogation from these provisions even in such difficult circumstances as a period of emergency. Indeed, the requirement for respect of these provisions will bring at least a sense of proportion to the situation and help ensure that the state and those exercising authority on its behalf will at all times act with due regards and respect to the fundamental rights and freedoms set out in the Charter and hence its recommendation herein.

#### Article 43 (4)(c)

The Committee recommends the deletion from the provisions of the words “an independent and impartial tribunal appointed by the President from candidates proposed by the Constitutional Appointments Authority for this purpose” and the replacement thereof by the words “Constitutional Court”. The words to be deleted are taken out of an existing law which was promulgated at the time when Seychelles did not have a specialized court dealing with matters of encroachment on the fundamental rights and freedoms. We now have the Constitutional Court which is a court dedicated to deal with such issues. It is natural and logical to confer jurisdiction to hear cases dealing with contravention of human rights and freedom to that court instead of establishing a new ad hoc tribunal.

#### Article 43 (e) (d) and (f)

In consequence of the amendment proposed above it is recommended that the word “tribunal” wherever appearing in any of the provision above be replaced by the words “Constitutional Court”.

#### Article 43 (f)

The Committee recommends the insertion of the words “the place and manner of detention and” after the words “concerning”. This is to make it clear that the jurisdiction of Constitutional Court extends to also the conditions of detention of the person and not only to the issue of whether the person should be detained or not.

#### Article 43 (5)

As a result of the recommendation made with regard to article 43 (c) the Committee recommends the deletion of this provision.

### **Article 44 (Savings in relation to disciplinary force)**

#### Article 44 (4)

It is recommended that the words “A law referred to in clause (3)” be deleted and replaced by the words “A law under this article”. This is to ensure that all laws passed in relation to the disciplinary forces under this article and not only a law specifically passed under clause (3) must respect human dignity and prohibit genocide, which are crimes against humanity.

## Part IV

### Remedies

#### Article 46 (Remedies for infringement of the Charter)

##### Article 46(1)

The Committee is of the view that where a law contravenes the Constitution any person should have the right to apply to the Constitutional Court for redress. Otherwise if one were to wait until one's rights is affected in order to have standi to apply for redress unconstitutional laws may remain on the statute books (and may even be enforced) by default as some person may not want to be bothered to apply to the court or may be unable to do so for multiple reasons such as financial and health. It therefore recommends that the existing provision be deleted and replaced by the following-

“(1) A person who claims that a provision of the Charter has been or is likely to be contravened by any law, or an act or omission relating to that person, may, within five years, apply to the Constitutional Court for redress.”

##### Article 46 (2)

As result of the amendment to article 46 (1) clause 2 of article 46 should also be amended. The original provision which generally allows another person to make an application on behalf of another person becomes redundant. However there is still need to allow another person to apply on behalf of person affected by an act or omission where the person affected cannot do so himself. The Committee recommends that the new provision reads thus:

“(2) A person may make an application to the Constitutional Court for redress on behalf of another person in relation to which a provision of the Charter has been or is likely to be contravened by an act or omission, with or without authority of the other person, if the other person is unable to personally make the application.”

##### Article 46 (3)

The Committee recommends that this provision should worded such so as to -

(a) permit the Constitutional Court to decline to entertain an application under

clause 46(1) only where the applicant has already obtained adequate redress under a law, and

- (b) permit any other court from not entertaining any application for redress in respect of a matter falling under this article only where the Constitutional Court has already granted adequate redress to the applicant.

This is to make sure that where ever the applicant goes he should be able to ask for and be given adequate redress but that once he has obtained adequate redress from whatever court he cannot go on to another court and ask for the same again.

As article 46(3) is worded presently the exclusion is only if any (but not adequate) redress has been obtained. Under the proposed amendment the applicant would need to show, and the court will have to look at, whether any redress obtained was adequate before granting any additional remedy or indeed proceeding to hear the application itself. It would be for the applicant to prove that the redress obtained was not adequate.

Article 46 (4)

It is recommended as result of the amendment proposed above to delete this provision.

Article 46 (5)

The Committee recommends the substitution of the word “damages” where it occurs in the second place in paragraph (d) by the words “loss or damage suffered”. The suggested amendment is more about the appropriate use of words rather one of substance.

Article 46 (6)

The Committee recommends that the clause be deleted and replaced by the following:

- “(6) Where the Constitutional Court makes a declaration under clause (5)(b), the Court shall send a copy of the declaration to the President and the Speaker who, subject to any decision on appeal therefrom, shall act upon the declaration.”

The purpose of the suggested amendment is to ensure that there is a corrective follow-up action to a declaration of unconstitutionality made by the Constitutional Court in respect to any law and that the law does not remain on the statutes book and further contravention of the Charter is committed in pursuance thereof.



## Article 46 (10)

The Committee would like to express its disquiet about the rules made pursuant to this provision which rules curtail the rights afforded by the Charter. The Committee is of the view that the right should extend for a period which is at least equal to the right of action under the Civil Code which is presently 5 years. Rules made by the Chief Justice which are only procedural in nature should not cut or attempt to cut short a right conferred by the Constitution. In consequence the Committee proposes that the provision be amended by deleting from the provision the words “, including rules with respect to the time within which an application or a reference may be made or brought.” and inserting a full stop after the word “article”.

Alternatively, for same reason given before, that the words “with respect to” where they occur in the second place be deleted and replaced by the words “which extend but not reduce”

## **Part V**

### **Principles of Interpretation**

#### **Article 47 (Scope of exceptions)**

The Committee recommends the insertion of a new paragraph to the article as follows-

“(c) shall not apply so as to circumvent or reduce any right under this Chapter.”

The purpose of this amend is to re-enforce and reiterate the point made by the Committee before that the Charter is about rights and the exceptions or restrictions set out in the Charter should be seen and interpreted as such but not so as to overshadow or completely erode the right or empty it of meaning and effect.

#### **Article 48 (Consistency with international obligations of Seychelles)**

##### Article 48 (c)

The Committee recommends the insertion after the word “regional” of the words “courts and”.

### **Article 49 (Interpretation)**

The Committee recommends in the definition of democratic society the substitution of the words “proper regard” by the words “proper respect of and protection”. The Committee is of the view that the new expression inserted in the definition underscores a more active involvement of the society towards human rights and freedoms which does not come out from the expression it suggests be deleted.

## **CHAPTER 4 (The President)**

### **Article 51(Qualification for election as President and election)**

#### Article 51(1)(a)

In line with its recommendations made under Chapter 2 (Citizenship) the Committee recommends the insertion after the word “Seychelles” of the words “by birth”. The Committee is of the view that only persons who are Seychellois by birth should be able to become President. This is not a new concept. It is a common provision in many jurisdictions and a well-known example of this is the United States of America.

#### Article 51 (3)

The Committee is of the view that the period of 10 days given in the Elections Act to challenge the validity of a Presidential Election is unreasonably too short. It recommends a more reasonable period of 14 or 21days. The Committee is of the view that where the time period afforded to lodge a petition is unrealistically short in order to try and beat the deadline the tendency is to lodge an election petition at the slight hint or shadow of impropriety or illegality. As a result there are often too may challenges and some of them without substance. Allowing for sufficient time to reflect would most certainly cut down on spurious petitions.

#### Article 51(6) (a)

The Committee recommends the insertion after the words “clause (3)” of the words “or intervention by the Attorney General under clause (5)”. The article

already provides for such intervention in clause (5) but does not say how. The proposed amendment is by way of completion.

Article 51(6) (b)

The Committee recommends, for reason similar to that given before, the insertion after the word “application” of the words “or intervention by the Attorney General under clause (5)”.

### **Article 52 (Tenure of office of President)**

Article 52(1)(b)

It is recommended that the provision be deleted and replaced by another provision worded along the same lines as article 52(3)(b), namely

“(b) where an election for the office of President is held before the expiration of the term of five years, on the date next following the date of declaration of the election of President.”

As article 52(1)(b) is presently worded it would mean that there may be 2 “Presidents” at this point—the incumbent, who will still be in office, and the newly elected President-to-be. As it often happens in such a situation there is confusion. The incumbent President cannot do much as his authority, especially moral authority, to take decisive actions is often lacking. People see and treat him as the “has-been President” and hardly pay attention to him and to what he says and does. On the other hand the “President-elect” is constitutionally powerless until he assumes office. The recent situation in the United States of America during the interim period between the election of President Obama and the date he took office is illustrative of this.

In order to avoid the apparent gap in the executive authority of the State during the in-between period the Committee recommends an immediate handing over of power after the election.

It is true that we in Seychelles have not gone through this trauma as there has been only one change over during the currency of this Constitution and it did not involve an election but the transfer was done under another provision of the Constitution during the term of office of an incumbent President.

Article 52(3) (a)

The Committee recommends the deletion of this provision as the matter is already covered by article 52(1).

Article 52(6)(b)

The Committee recommends that “twelve months” be replaced by “three months” and “forty-eight months” be replaced by “twelve months” because it is of the view that the National Assembly should have much more stringent control over the Presidency at the time when the President is in office merely by virtue of an extension of his mandate granted to him as result of the existence of an emergency.

**Article 52A (Appealing for fresh mandate)**

This provision was brought in by the Fifth Amendment to the Constitution. It allows the President at any time after a year into his first or second term of office to seek another term of office by means of a fresh presidential election.

Article 52A(4) (a)

The majority of the members of the Committee was of the view that once the President has announced his intention to seek a fresh mandate by publication of a proclamation he should not be able to go back on the decision by revoking the proclamation because otherwise it opens the provision to abuse as it could be used only as means of testing the electoral temperature rather than for its stated purpose of purely seeking a new mandate. The minority view however was the provision should stay as is.

**Article 53 (Removal of the President for incapacity)**

Article 53(9)

The Committee recommends that the provision be amended by inserting after the words “resolves” of the words “after debate”. The purpose of the proposed amendment is to ensure transparency in the whole proceedings and reduce the possibility of the President becoming the victim of some underhand move to oust him from office.

**Article 54 (Removal of President for violation of the Constitution or gross misconduct)**

Article 54(4)

The Committee recommends the replacement of the words “not less than two thirds” by the words “a simple majority”. The reason for the proposed amendment is that this is only a threshold provision for starting the proceedings. The President is afforded at least 2 other constitutional protective hurdles which those who are challenging him must overcome. Firstly, the Constitutional Court must, after carrying out an investigation, at which the President has a right to be heard, find that there is prima facie case against the President otherwise the proceedings comes to stop. Secondly, if there is a finding of a prima facie case the National Assembly has then to approve by a two-third majority the removal of the President. The Committee is of the view that given the elaborate procedure there is no need to place the bar too high as a threshold requirement otherwise it makes the provision practically toothless.

**Article 59(Protection of President in respect of legal proceedings during office)**

Article 59 (1)

The Committee recommends that where the President is the prosecutor of a civil action he should, having chosen to step into the court arena so to speak, not be permitted to hide behind the constitutional shield against a party to the proceedings. The provision should be amended accordingly.

**Article 60 (Power of pardon)**

Article 60 (3)

The Committee recommends that there be written guidelines, preferably set out in an Act, for the exercise of the power of pardon.

## **Article 64 (Diplomatic representation and execution of treaties)**

Article 64(5)

The Committee recommends the deletion of this provision in order to ensure that there is at all times control by the National Assembly of international obligations entered in the name of Seychelles by the Executive.

## **CHAPTER V (the Executive)**

### **Article 66A (Vice-President)**

The Committee recommends that where President dies or is removed from office and is replaced by the Vice President pursuant to this provision and in turn the President (who was formerly Vice President dies or resigns) the person who became Vice President should be required for hold election within 30 days of assuming office of President. His assumption of office of President is merely for the purposes of calling a Presidential election and his powers during the time he holds office of President should be limited and circumscribed by the Constitution.

Further, the Committee recommends that the person who assumes office as President in the last mentioned circumstances should be preferably the Speaker or the Chief Justice. Please see further under article 75 regarding the post of Designated Minister.

The Committee therefore recommends the amendment of the article accordingly.

#### **Article 66A(11)(a)**

The Committee recommends the insertion before the word “Assembly” of the word “National” as this is the full name of this institution.

Article 66A(13)

The Committee recommends the inclusion of the word “pension” in the provision in order to render constitutional what is being done in practice.

## **Article 69 (Ministers)**

Article 69 (5)

The Committee recommends the inclusion of pension in the provision for the same reason given under article 66A(13) .

## **Article 74 (Vote of censure)**

Article 74(3)(a)

It is recommended that the provision be amended by inserting after the word “President” the words “and the Minister” in order that the Minister concerned is also made aware of the motion passed by the National Assembly. The Committee is of the view that this is fair and transparent.

Secondly, the Committee recommends that paragraphs (a) and (b) be merged so that the clause would read as follows-

“(3) The Speaker shall, upon receipt of the notice of the motion under clause (2), send a copy of the notice to the President and the Minister and, unless the Minister has ceased to hold office beforehand, cause the motion to be debated in the National Assembly within fourteen days after receiving notice of the motion.”

It would seem that the paragraphing is not properly done. The base of the clause should have been part of paragraph (b): hence the recommendation for the merger.

Article 74(5)

The Committee recommends the insertion after the words “notify the President” of the words “and the Minister” and after the words “under Article 73(2)” of the words “as soon as practicable”.

The purpose of the proposed amendment is to ensure that the Minister is made aware of the passing of the motion of censure and that the President acts in compliance with the motion at the earliest possible.

The Committee is of the view and recommends accordingly that whenever a

person who is entitled to a pension is dismissed for an offence of or relating to corruption the Court should be empowered in addition to the sentence to consider ordering the withholding of payment of the pension.

### **Article 75(Designated Minister)**

The majority of members recommend the abolition of the post of Designate Minister. They are of the view that with the creation of the constitutional post of Vice-President and the functions which has been assigned to that post the post of Designated Minister is now redundant, obsolete and more of a sinecure.

The minority view in the Committee is for the keeping of the post.

### **Article 76 (Attorney General )**

Article 76(10)

The Committee recommends the insertion after the words “the Attorney General shall” of the words “be independent and shall”. The proposed amendment is to put emphasis on the independence of the office.

The Committee recommends the creation administratively within the office of Attorney General of two clearly separate divisions-one where the Attorney General acts as legal adviser to the Government and takes instructions from the Government and the other where the Attorney General acts as the prosecuting agency in which capacity he is totally outside the sphere of influence of the Government of the day.

## **CHAPTER VI (Legislature)**

### **Part 1 (National Assembly)**

### **Article 78 (Composition of National Assembly)**

Article 78 (a)

The Committee recommends that the present provision be replaced by the following-



- “(a) The National Assembly shall consist of the following members-
- (i) such number of members directly elected in accordance with-
    - (A) this Constitution; and
    - (B) subject to this Constitution, an Act,  
as is equal to the number of electoral areas; and
  - (ii) such number of members as shall not exceed half of the number of directly elected members referred to in paragraph (a) elected on the basis of the scheme of proportional representation set out in Schedule 4.”

There was a division of views as to whether there should be a difference in the appellation of the members depending on whether they have been directly elected by the voters of an electoral district or are members by virtue of their nomination by a party following the application of the scheme of proportional representation under Schedule 4. The divergence was whether the latter should also be called “elected” members or if “elected member” whether the members representing an electoral area should then be called “directly elected members”, again in an attempt to distinguish between the two groups.

Those members of the Committee who were for the indiscriminate use of elected members were of the view that as the members are all full-fledged with the same voting right and are equal in the National Assembly there should not a difference in their names. Secondly the so called nominated members are in fact elected because they too are chosen although by a different method.

This issue will recur with Article 82

In view of the divided opinion the Committee leaves the nomenclature to be decided by the authorities.

With regard to the number of members elected in accordance with Schedule 4, the Committee recommends that it should be half of the number of members representing electoral areas. This would allow the number to grow or diminish depending on the number of electoral areas. It is therefore more flexible. As it is it is fixed at 10 and would require an amendment to the Constitution each time that there is a wish to change the number.

### **Article 79 (General elections and by election)**

#### Article 79 (4)

The Committee, save for one member who disagrees and wants to maintain the status quo, recommends the deletion of this provision. The principal argument of those for the deletion is that the member should still stand for election so that there is a determination of the amount of supports and votes he gets. The actual number of votes the candidate is elected with will be a better measure of the standing of the party of the candidate when the votes are applied in connection with the proportional representation scheme. It is totally unrealistic and unfair to assume, as the provision does presently, that the candidate will get, and therefore is entitled to, all the eligible votes in his electoral district.

The Committee suggests however that the draftsman should consider whether instead of simply deleting the provision it would not be best and clearer to replace the provision by one which requires election to go ahead even where there is one candidate.

### **Article 80 (Qualification for membership to the National Assembly)**

#### Article 80 (a)

The Committee recommends the insertion after the words “person is” of the words “a Seychellois by birth and”. The amendment is a sequel of the views expressed and amendments proposed by the Committee earlier on under Chapter II on the issue of citizenship.

### **Article 81 (Vacation of seats)**

#### Article 81(1) (f)

The Committee recommends that closer attention is paid to this provision by the Speaker and that there should be a formal written declaration by the member with regard to the application of the provision in their respect.

Article 81(1)(h)(ii)

The Committee recommends the deletion of this provision because it is of the view that the Constitution and the authorities should not get involved in the internal running or operation of party politics.

Article 81(1) (l)

The Committee recommends the insertion of a new paragraph (l) as follows-

“(l) if the person is appointed to hold judicial office.”

The reason for the proposed amendment is obvious but necessary in line with the theme of separation of power which runs throughout the Constitution.

**Article 82 (Determination of question as to membership)**

Article 82(1)

The question of appropriate name for the members of the National Assembly comes up again here. Please refer to comments in article 79 (a).

Article 82(2) (b)

The Committee recommends the deletion of the words “by any members” and the substitution therefor by the words “any person entitled to vote”.

The reasons for the recommended amendment above are to bring all the members of the National Assembly on a par by giving a voter the right to make an application to determine whether a member has been validly elected in respect of all members. Secondly, to underscore the point that the election of members under the scheme of proportional representation is a matter which also concerns the electorate and not just the party.

Article 82(3)

The Committee recommends the amendment of the provision to make it clear that a person who has been removed as member of the National Assembly or whose removal as member of the National Assembly is being sought has the right to make an application under clause (1). As presently worded the reference in clause

(3) to “any member” seems to indicate that once a person has ceased to be member he has no standi to make such an application. In fact in most cases he would invariably be the one most likely to have an interest in making such an application.

#### Article 82(6)(a)

The Committee recommends the amendment of the clause so as to make provision for circumstances in which the Attorney General may intervene under clause (5) before the Constitutional Court and the procedure which he must follow when he does so.

#### Article 82 (6)(b)

There is already a general provision under article 136(b) which empowers the Chief Justice to make Rules of the Supreme Court in relation to the Constitution. It is recommended that article 82(6)(b) be deleted and to let the Rules necessary for this provision be made under article 136(b).

### **Article 83 (Speaker and Deputy Speaker)**

#### Article 83(3)(a) and (b)

A majority of the members of the Committee recommends the deletion of both paragraphs as they may contradict certain other provisions of the Constitution which allow the Speaker or Deputy Speaker to remain in office in certain circumstances for specific purposes despite ceasing to be a member, for example under article 42(3) during an emergency. The alternative recommendation is to delete only paragraph (a) and in paragraph (b) to insert after the word “Assembly” the words “otherwise than by dissolution”

The view of a minority of the Committee is to retain both paragraphs (a) and (b).

#### New article 83(3)(c)

The Committee recommends the addition of a new paragraph to clause (3) as follows-

“(new) when the Speaker or Deputy Speaker resigns”

The reason for this is obvious. The omission of this provision seems to have been an oversight.

#### Article 83(6) and (7)

The Committee recommends the inclusion of pension in both provisions to validate existing legislation which covers pension among other things.

#### General Discussion on article 83

The Committee agrees that the person holding the office of Speaker should at all times be and be seen to be independent and fair.

The Committee noted that since the National Assembly has been in function the Speaker has always been elected from the majority party in the Assembly and a member who is elected under the scheme for proportional representation. The implication is that he was always under the ultimate control of the party since he could be removed at any time.

In addition, the Speaker had in the past also been a member of the Central Committee of the majority party.

The Committee wonders in the circumstances described above whether the Speaker can retain his independence from the party he belongs and be recognized by the people to be ostensibly above party politics.

The Committee is of the view that once elected to the post the Speaker should distance himself from party politics and step down from the party caucus or other influential party committees.

Some members were of the view that it should be made a constitutional requirement that the Speaker not participates in political activities. Other members were of the opinion that there was no necessity for any statutory obligations to this effect but that over the years this would become an accepted practice and tradition.

#### Leader of Government Business

The Committee recommends that consideration be given as to whether the position of Leader of Government Business should not be made a constitutional post.

### **Article 84 (Leader of the Opposition)**

Article 84(4)

The Committee recommends for consistency that “pension” be included in the provision.

### **Part II (Legislative Power and its exercise)**

### **Article 87 (Referral of Bills to the Constitutional Court)**

The Committee recommends the making of Rules of the court for this purpose.

### **Part IV (Procedures in the National Assembly)**

### **Article 94 (Right to introduce Bills)**

The Committee recommends that Bills are published well in advance so that members of the National Assembly have sufficient time to properly consider, and prepare themselves to meaningfully debate on, the Bills. While the Committee recognises the need at times to make use of the emergency procedures in order to pass legislation the Committee is of the view that recourse to those procedures should be kept to a minimum and only use in real emergency situation.

### **Article 104 (Committees)**

The Committee recommends that the provision be amended to allow the setting up from time to time of committees of the National Assembly as and when the need arises. As it is the Committee can only be established at the beginning of each session of the Assembly but not otherwise. This is not practical as it is not possible to predict at the time all the possible problems which the country or the National Assembly may face during the session of the Assembly.

The Committee recommends that the Public Accounts Committee of the Assembly be chaired by a member of the opposition. This would allow for greater transparency and better scrutiny of government spending.

### **Article 105 (Salary of members)**

The Committee recommends the amendment of the provision to allow for the payment of “pension” as has been done elsewhere for other persons and, if provision is made to make the Leader of Government Business a constitutional post, to include Leader of Government Business in article 105 (3)

## **Part VII (Electoral areas, Franchise and Electoral Commissioner)**

### **Article 112 (Electoral Areas)**

Article 112 (2)

It is recommended that the whole provision be deleted and replaced by the following-

“(2) There shall be not less than one electoral area on each of Mahe and Praslin and the Inner Islands”

This is to provide flexibility and allow the number of electoral areas to be increased or decreased by a specific law as the need arises. As it is one would need to amend the Constitution if one wants to increase or reduce the number of electoral areas on Mahe or Praslin or with respect to the Inner Islands.

Article 112 (3)

It is recommended that in the umbrella of the provision the words “on Mahe and Praslin” and in paragraph (b) the words “on Mahe” and “on Praslin” be deleted. This is as a result of the proposed amendment to article 112 (2) for reason stated under that article.

### **Article 113 (Right to vote)**

It is recommended that in the base of the article the words “if the citizen were not so registered” be deleted.

### **Article 114 (Qualification for registration as a voter)**

#### Article 114 (1)(b)

The Committee recommends the deletion of the word “criminality” and its replacement by a wording which covers only a person who has been convicted of an offence and is in prison therefor. As presently worded it is much too wide as it extends to any crime. A person could technically be disenfranchised for parking on a double yellow line.

#### Article 114(1)(c)

The Committee is of the view and recommends accordingly that a Seychellois who lives overseas but who is present in Seychelles at the time of a presidential election or a referendum be allowed to register and vote thereat. But when it comes to National Assembly election the Committee acknowledges that this might be more difficult because the election is based on electoral areas and in view of the relatively small number of eligible voters in each electoral area allocating any number of voters to an electoral area could produce distorted or upsetting results and for this reason it does not recommend any change for National Assembly elections. As a result the Committee proposes that the article 114 (1) (c) reads as follows-

“(c) in the case of an election of a member or the members of the National Assembly, residence outside Seychelles.”

### **Article 115(Electoral Commissioner)**

The Committee recommends the establishment of an Electoral Commission in place of the present Electoral Commissioner. The Committee proposes that the Commission be composed of three members, appointed on the recommendation of the Constitutional Appointments Authority. As a result throughout articles 115 and 116 Electoral Commissioner should be replaced by electoral Commission.

#### Article 115(5)

In view of the changes proposed above there would not be need to have a full time Commissioner. The Committee recommends the deletion of the word “gratuity” in the provision. However the Committee agrees that in the event that



the head of the Commission is employed full time the law made under this provision should afford him the same benefits as for other constitutional appointees.

**Article 116 (Functions of Electoral Commissioner)**

Article 116 (1) (b)

In view of the amendment proposed to article 114 (1)(c) relating to the number of electoral areas the Committee recommends the deletion of the words “Mahe” and “Praslin”.

Article 116 (5) and (6)

The Committee recommends the insertion in both clauses after the word “order” of the words “or any part thereof”.

**Article 117 (Control of funds in relation to election and referendum)**

Article 117 (c)

The Committee recommends the insertion after the word “broadcasts” of the words “during a period of election or referendum.” The purpose of the amendment is to limit the control of political broadcast only during election or referendum.

**Article 118 (Registration of political parties and control of funds)**

The Committee is of the view and recommends accordingly that the law made under this provision should make provision for greater control of spending or use of funds during election time or time of a referendum to prevent abusive use of funds at the disposal of a party.

## **CHAPTER VIII (Judiciary)**

### **Part I (General)**

#### **Article 119 (Judicial Power of Seychelles)**

The Committee recommends the retention of the existing nomenclature and hierarchy of the courts. While the Constitutional Court can remain a division of the Supreme Court it should be given greater prominence and a higher status, sit more regularly and not only on Tuesdays and as much as possible manned by dedicated judges of high calibre.

To achieve the recommended objectives stated hereinbefore the Judiciary Act should be amended to permit the appointment of more judges of the Supreme Court.

The Committee recommends that the Judiciary be treated as a separate branch of the State and to underscore its independence from the Executive Authority of the State be given financial and administrative autonomy from the Executive.

#### **Article 120 (Establishment and jurisdiction of Court of Appeal)**

The Committee recommends that the right of appeal given in the Constitution should at no time be cut down or restricted by any law. Any law made in relation to the right of appeal should only be able to extend or elaborate on the right but not otherwise curtail the right. The Committee is of the view that this is what the present provision states despite other interpretations placed on the provision. However, in order to put the matter beyond doubt in view of certain judicial authorities or pronouncements the Committee recommends, if required, the amendment of the provision to this end.

Notwithstanding the broad statement made before the Committee agrees though that there should not be an appeal as of right (a) from interlocutory decisions and (b) by the state against a decision of the Supreme Court in criminal matters.

To give effect to the above the Committee recommends the replacement of article 120(2) by the following-

“(2) There shall be a right of appeal to the Court of Appeal from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court

other than a decision or order of an interlocutory nature or by the Attorney General or a public body from a decision, order or judgment in a criminal matter.”

#### Article 120(3)

The Committee recommends the amendment of article 120(3) to make it clear that the Court of Appeal may determine any constitutional issue which is raised for the first time on appeal.

#### Article 120(6)

The Committee also recommends the amendment of article 120 (6) to bring it in line with the recommended amendment to article 46 to the effect that the Speaker shall act upon the finding of the Court of Appeal with regard to the unconstitutionality of any law.

### **Article 121 (Composition of Court of Appeal)**

The majority of the Committee bar one member recommends that article 121 (b) be deleted so that only justices of appeal can sit on the Court of Appeal. The Committee is of the view that from a public perception it may be difficult to understand how judges of the same court can be independent enough to sit on appeal against judgments of fellow judges from the same court.

One member of the Committee wants the provision retained as is because, in his view, it allows for optimum use of all the judges and allows for capacity building in our courts.

### **Article 122 (Qualifications of Justices of Appeal)**

The Committee is of the view that in addition to the existing qualifications there must be added that of working knowledge of French and prior practice in a mixed jurisdiction based on French Civil law and common law. Secondly, that Seychellois should always be the preferred candidates for any judicial position and that it is only if there are no suitable Seychellois candidates that non Seychellois candidates may be considered.

A majority of members of the Committee was of the view that both the posts President of the Court of Appeal and that of Chief Justice should always be occupied by persons who are Seychellois by birth.

In response to the criticism that because of its small size and the fact that most people know each other and may even be related it may be difficult having a Seychellois holding the two posts the members in favour of Seychellois candidates are of the view that it is precisely because of the local bond and connection that a Seychellois President of the Court of Appeal or Chief Justice would be more in tune with and conscious of the needs of the population.

The minority is more concerned with the fact that making it mandatory for the President of the Court of Appeal and Chief Justice to be Seychellois by birth may in the end prevent the best candidates for those posts from being chosen as there may be more concern at looking at the nationality rather than qualification and competence of the candidates.

The Committee also recommends that a person who is not a citizen of Seychelles who has been appointed judge or justice of appeal should be not eligible for appointment as justice of appeal.

The Committee recommends that the provision and other related provisions of this Chapter be amended accordingly.

#### **Article 124 (Acting Appointment of Justices of Appeal)**

The Committee recommends the establishment of system of seniority of judges with the most senior available judge acting in place of his senior in the latter 's absence.

### **Part III (Supreme Court)**

#### **Article 125 (Establishment and jurisdiction of Supreme Court)**

Article 125 (1)

The Committee recommends the insertion at the beginning of the clause after the words “jurisdiction and” of the words “other”. This is to underscore the fact that there are other provisions of the Constitution which confer power on the Supreme Court.

Article 125(1)(c)

It is recommended that the words “adjudicating authority” be replaced by the words “adjudicating authorities”.

Article 125 (3)

The Committee recommends the insertion of a specific clause which deals with the appointment of the Chief Justice and other judges of the Supreme Court as has been done for the Justices of Appeal under article 123. The present clause deals with the composition of the Supreme Court but not how the judges are appointed.

Article 125(5)

The Committee recommends the promulgation of a law which clearly defines the functions of the Supreme Court and how those functions are to be exercised.

The Committee recommends further the discontinuance of the present practice of merging the functions of Master (judicial in nature) with those of Registrar (purely administrative).

Article 125 (7)

The Committee recommends the amendment of this definition by deleting the same and substituting it by the following-

“adjudicating authority” means a person, body or authority which performs a judicial or quasi-judicial function or whose decision affects the legal right of an individual”

**Article 126 (Qualification of Judges and Masters)**

Article 126(1)(a)

The Committee recommends the deletion of the words “been entitled to practise” and the replacement thereof by the words “practised” and the deletion of the words “seven years” by the words “ten years”. The purpose of the amendment is to ensure that the candidate has actual practical knowledge of the practice of law in Seychelles as oppose to merely theoretical knowledge of how it is done, which

the present requirement demands. The ten years is to ensure that the candidate is well versed in the practice.

#### Article 126 (1)(b)

The Committee recommends the re-lettering of the present paragraph as paragraph (d) and the insertion of new paragraphs (b) and (c) as follows-

- “(b) the person is a judge and has served as such in a court of unlimited jurisdiction, both civil and criminal, for a period of not less than ten years,
- (c) the person is a judge and has served as judge in, and practised law before, a court of unlimited jurisdiction, both civil and criminal, for periods which together amount to not less than ten years;”

The purpose of the amendments is to allow a judge of ten years experience as judge in, or a judge who has a combined ten years experience as judge in and practice as a lawyer before, a court of unlimited civil and criminal jurisdiction to be eligible to be appointed judge.

#### Article 126(1)(a)

The Committee recommends the deletion of the words “been entitled to practise” and the replacement thereof by the words “practiced”. The purpose of the amendment is to ensure that the candidate has actual practical knowledge of the practice of law in Seychelles as oppose to merely theoretical knowledge of how it is done, which the present requirement demands.

The Committee recommends also that a person who served as judge and thereafter became Seychellois is not eligible to being appointed judge at the end of his period of appointment. The reason for this is ensure that foreign judges are not influenced in their decisions by being offered citizenship as a reward. Please see comments further down under article 131.

#### Article 126(3)

The Committee recommends the insertion before the words “public officer” of the words “judicial officer”. It is also recommended that the words “judicial officer” be defined in the article as “including a magistrate or a person who have served as a member of a tribunal established by law” This is to underscore the point that a judicial officer is not necessarily a public officer. Without the amendments a master or magistrate would have been excluded from being qualified to be appointed as a judge.

### **Article 128 (Acting appointment of judges)**

Article 128 (2) (c)

The Committee recommends the use of this provision to appoint attorneys as temporary magistrates and judges whenever there is any need for this. Not only will it assist to alleviate the problem of lack of judges or magistrates in the short term but it will also give interested candidates a chance to acquire experience and a taste of the Bench.

### **Part IV (Constitutional Questions)**

#### **Article 129 (Supreme Court as Constitutional Court)**

The Committee wishes to reiterate here the point it made under article 119 about the Constitutional Court when it started dealing with the topic of judiciary.

Article 129 (2)

The Committee recommends the insertion after the words “more judges” of the words “and one of them is not the Chief Justice or the most senior judge”. The purpose of this amendment is to ensure that the most senior of the judges always presides the sitting of the Constitutional Court. As worded senior could also mean senior by age which may not necessarily be senior by appointment or status.

#### **Article 130 (Constitutional question before Constitutional Court )**

The Committee recommends that the same amendment relating to standi it recommended when dealing with article 46(1) be inserted in here so as to make it apply to the Constitutional Court.

## **Part V (Terms of appointment of Justices of Appeal and Judges)**

### **Article 131 (Terms of office of Justices of Appeal)**

#### Article 131 (1)

The Committee is of the view that the age limit for judges should be raised to seventy-five and that article 131(1) (d) and (e) be amended accordingly.

In addition to the above amendment the Committee recommends the amendment of article 131 (1)(d) to read as follows

“(d) in the case of a person who is a citizen of Seychelles and was a citizen of Seychelles at the time of his appointment, on attaining the age of seventy-five.”

and the re-lettering of paragraphs (e) and (f) as paragraphs (f) and (g) respectively and the insertion of a new paragraph (e) as follows-

“(e) in the case of a person who is a citizen of Seychelles but became a citizen of Seychelles while holding office of Justice of Appeal or Judge, at the end of the period for which he was appointed Justice of Appeal or Judge before he became a citizen of Seychelles;”

The purpose of the above amendment is to do away with the practice of appointing a non Seychellois as judge and then granting the person citizenship so that the person thereafter is treated as if he had been a Seychellois all along.

Please see also comment made with respect to the suggested amendment to article 161(1).

#### Article 131 (2)

It is recommended that the clause be replaced by the following:

“(2) Subject to any period of notice given therein, a resignation under clause (1)(c) shall have effect on the date on which it is received by the President.”

As presently worded a resignation will have effect when it is received by the President irrespective of when it is stated to have effect. The proposed



amendment is to allow for the period of notice stated in the resignation notice to have effect.

Article 131 (3)

Please see the recommended amendments to clause (1) regarding the vacation of office aimed at discontinuing the practice of granting citizenship to sitting judges.

Article 131 (4)

It is recommended that the clause be replaced by the following-

“(4) A person who is not a citizen of Seychelles who has been appointed as a judge or justice of appeal shall not be eligible for appointment as justice of appeal.”

**Article 132 (Miscellaneous provisions with respect to tenure)**

Article 132 (3)

The Committee recommends the insertion of a time limit to prevent a person from remaining in office for an unnecessarily long time after he ceases to hold office on the Bench. A maximum period of 3 months is recommended.

**Article 133 (Salary etc of Justices of Appeal and judges)**

The Committee was divided as to whether non-Seychellois judges should also get a pension. It was suggested that this should be left to the Act dealing with the matter.

**Article 134 (Removal of justice of appeal or judge)**

Article 134 (2)

The Committee recommends the deletion of the words “under clause (1) ought to be investigated” and their replacement by the words “is not frivolous or vexatious”. This is to allow an investigation in all complaints except where it is

vexatious or frivolous. As worded the Constitutional Appointments Authority is given too much discretion and this could stifle investigation in cases of genuine complaints.

Article 134 (2)(b)

The Committee is of the view that in addition to removal from office the tribunal should also have the power of referral to the Attorney General for prosecution if an offence has been committed. It accordingly recommends the amendment of the provision.

Article 134 (4)

It is recommended that the provision be amended by inserting after the word “President” of the words “on the recommendation of the Constitutional Appointments Authority”. This is to be consistent with the recommending role of the Constitutional Appointments Authority.

The Committee is also of the view that provision should be made in the article to the effect that each time there is an investigation of a judge or justice of appeal there should be automatic suspension of the judge or justice of appeal until the conclusion of the investigation.

**Part VI (Miscellaneous)**

**Article 138 (Seal of Court)**

The Committee recommends the amendment of the provision to include a seal for the Court of Appeal as well.

**CHAPTER IX (Constitutional Appointments Authority)**

**Article 140 (Composition of Constitutional Appointments Authority)**

The Committee recommends that the Constitutional Appointments Authority (“CAA”) be composed of 5 instead of 3 members. Three of the members will continue to be appointed as presently provided.

Of the 2 new members, one will be appointed by Lungos or the umbrella organization representing the federation of the non-governmental organizations or civil society.

The second member by the Bar Association of Seychelles from among persons of proven integrity and impartiality who held judicial office in a court of unlimited jurisdiction or who were qualified to practise before the Supreme Court and the Court of Appeal but are not presently practising or have agreed during the term of tenure as a member of the CAA not to practise before any courts or tribunals in Seychelles.

The reasoning for the proposed amendment is to broaden the base of the CAA from being a purely political concern to a more inclusive and representational base which embraces the civil society generally and the Bar Association, as the group which is more immediately and directly affected by decisions of the CAA.

In order to avoid the original and one-time strong criticism that members of the Bar Association should not be appointed on a body which recommends the appointment of judges the candidate who the Bar Association may nominate to sit on the CAA must come from a tightly circumscribed group of persons who have either ceased to be or will not be involved with the court during the term of office of the person nominated by the Bar Association on the CAA.

The Committee recommends that article 140 be amended accordingly.

#### **Article 141 (Qualification for membership)**

Article 141 (a)

The Committee recommends the replacement of the paragraph by the following paragraph-

“(a) is a person of proven integrity and impartiality who has held judicial office in a court of unlimited jurisdiction or was qualified to practise before the Supreme Court and the Court of Appeal but is not presently practising or has agreed during the tenure as a member of the Constitutional Appointments Authority not to practise before any courts or tribunals in Seychelles;”

The reason for the proposal has been given before.

### **Article 142 (Tenure of office)**

Article 142 (4)

The Committee recommends the amendment of the provision to include pension as for other constitutional appointees.

## **CHAPTER X (OMBUDSMAN)**

### **Article 143(Ombudsman)**

Article 143(2)(d)

“The Committee recommends the deletion after the words “Constitution or” of the words “has been designated as” because it is of the view that designation is not sufficient. The person has to be Vice-President.

The Committee further recommends that the provision be amended to prevent the Ombudsman from being a member of the executive committee of a political party

Article 143 (4)

The Committee recommends the insertion after the words “compromise the” of the words “ability to discharge effectively,” in order to stop the Ombudsman in engaging in any activity which compromises his position.

### **Article 144 (Tenure of office of Ombudsman)**

Article 144(2)

The Committee recommends the rewording of the provision in order to make it easier to read and understand. It is suggested that it be worded as follows-

“(2) a person holding the office of Ombudsman shall vacate the office on-

- (a) death;
- (b) if the person, by writing addressed to the President, resigns;
- (c) if the person is removed from office;
- (d) at the end of a term of office.”

Article 144(4) and (5)

The Committee recommends the amendment of the provisions to include pension.

In view of the dual role of the Ombudsman arising from his chairmanship of the Human Rights Commission the Committee recommends that a provision similar to article 58(6) be included in the article to prevent the Ombudsman from drawing 2 salaries etc but that he should in the circumstances be given the choice which of the salaries he wishes to draw.

The Committee also discussed the office of Ombudsman in the light of the creation recently of the Human Rights Commission. The Committee recommends that the functions of both institutions be re-looked at in order to avoid duplication of work of the 2 bodies. In order to achieve this some members suggest the Commission should restrict itself to matters falling within the Charter whereas the Ombudsman should concern itself with other violation of the Constitution.

As a consequence of the separation of functions suggested above the Committee recommends that the Human Rights Commission should be made a constitutional body and its members appointed by the Constitutional Appointments Authority.

The Committee also suggests that article 46 be amended to provide for the Commission as one of the authority where a person may seek redress.

## **Schedule 5**

The Committee recommends that the Schedule be revisited following the creation of the Human Rights Commission in order to avoid duplication of functions which may result in confusion and the blunting of the effectiveness of both institutions.

## **CHAPTER XI (Public Service Appeal Board)**

The Committee recommends the abolition of this body altogether. The Committee is of the view that with the recent establishment of an independent employment tribunal appeals from which go to the Supreme Court there is sufficient guarantee for fair and impartial treatment of complaints relating to employment disputes involving civil servants by the tribunal. In addition to the tribunal being a more formal and better structured body having one tribunal dealing with all employment matters will ensure a uniformity of approach irrespective of who the employer is.

With regard to other matters presently being dealt with by the Board but which might fall outside the jurisdiction of the tribunal the Committee is of the view and recommends accordingly that these matters be dealt with by the Ombudsman or the Human Rights Commission.

## **CHAPTER XII (Finance)**

### **Article 151(Consolidated Fund)**

The Committee recommends the deletion from the provision of the words “, not being revenues or other moneys that are payable by or under an act for some specific purpose or into some other fund established under an Act for a specific purpose”. The Committee is of the view that all government revenues should go to the Consolidated Fund and all expenditure should come from that Fund and both should be under the final oversight and scrutiny of the National Assembly.

### **Article 154 (6) (Appropriation Act and statement of account)**

The Committee recommends the deletion of this provision. It is of the view that there is abusive use of the provision and as result of which the National Assembly has difficulty in exercising control over government budget. Too often the National Assembly is presented with a fait accompli through supplementary budgets and it is powerless to refuse to endorse what has already been over spent. It can only rubber-stamp.

### **Article 156 (Contingencies Fund and other funds)**

Article 156 (c)

In line with its recommendation at the opening of the Chapter the Committee recommends the deletion of this provision. The Committee is of the view that there has been abuse of this provision where all sorts of funds have been established and these have escaped the scrutiny of the National Assembly. The Committee repeats its view that all revenues of government should be paid into and all expenditures of government should be paid out of the Consolidated Fund.

### **Article 158 (Auditor General)**

Article 158(3)

The Committee recommends that the provision be recast to make it clear that the Auditor General can delegate to other qualified auditors who are specialists in particular fields of auditing the audit of certain institutions falling within his purview but that the Auditor General should however remain legally answerable for these audits.

## **CHAPTER XIII (Police)**

### **Article 160 (Commissioner of Police)**

The Committee recommends the inclusion in the article 2 amendments to the effect that-

- (a) the Commissioner of Police must be a Seychellois by birth;
- (b) the Commissioner of Police is not subject to the direction and control of any other person or authority when exercising the powers vested in him by an Act similar in nature to article 76 (10) in respect of the Attorney General.

The Committee feels that the amendment at (b) above will help to improve the image of the police generally which is seen too much as a policy instrument of the government of the day rather than an independent force of the State.

## **CHAPTER XIV (Defence Forces)**

### **Article 163 (Functions of Defence Forces)**

Article 163(1)

The Committee notes the inconsistency and unconstitutionality of the Defence Forces Act with respect to article 163 (1) (c). The constitutional provision permits the use of the Defence Forces for the purposes of providing assistance to civil authorities only during a period of emergency. The Defence Forces Act on the other hand allows the President to use the Defence Forces at any time to assist the police. The authorities are presently ignoring the provision of the Constitution

and using members of the Defence Forces to carry out police duties both on land and on sea.

The Committee recommends, that given the vast extent of the EEZ of Seychelles and our limited resources, article 163 (1) be amended to allow the use of the Defence Forces to police and enforce our laws in those waters where Seychelles has jurisdiction. The Defence Forces could thus be used protect the waters against pirates and to prevent the smuggling of illegal drugs into Seychelles.

## **CHAPTER XV (Miscellaneous)**

### **Article 165 (Removal of certain officers)**

#### Article 165 (3) (a)

The Committee recommends the replacement of the word “President” by the word “president”. The first is used for the President of Seychelles which is not the case here. The reference is to the president of the tribunal.

Secondly, the Committee recommends that the provision be also amended to provide for the tribunal to consist of a president who is a person who holds or has held office as a judge of a court having unlimited original jurisdiction or a court having jurisdiction in appeal from the first mentioned court and 2 eminent persons of proven integrity and impartiality.

The Committee is of the view that since we are here dealing with persons who hold important and influential constitutional positions the tribunal should be correspondingly composed of qualified persons of integrity who will act independently and transparently.

#### Article 165 (5)

The Committee recommends that the provision makes it mandatory (not discretionary as it is now) for the President to suspend a person where a reference is made to the tribunal in connection with the removal of that person from office. It will be recalled that a similar recommendation was made for article 134 (4) with respect to a judge under investigation.



#### Article 165 (6)

The Committee recommends the inclusion of a provision that the tribunal shall follow the rules of natural justice and afford the person under consideration the right of representation. This is to ensure transparency and fairness.

#### **Article 166 (Removal of Commissioner)**

##### Article 166(3)

The Committee recommends that similar amendments recommended above to article 165 be made here also for the same stated reasons.

#### **Article 167 (Local Administration)**

The Committee recommends the deletion of the words “in respect of its social and economic undertakings contained in Chapter III” in order to expend the reason for the division of Seychelles into units. The circumscription of the purpose of the division will be done by an Act. This would allow for flexibility.

Secondly, the Committee recommends that a law be passed to formalise and legalise such division, in particular, among others, for the boundaries of the divisions which at the moment are fixed (and thus susceptible to change each time there is a redefinition thereof) by reference to the electoral boundaries.

#### **Article 168 (Independent State-owned broadcasting media)**

The Committee recommends the application of this provision to all types of media and not only broadcasting. It therefore recommends the deletion of “broadcasting” wherever it appears in the provision.

##### Article 168 (1)

The Committee recommends that the deletion of the word “may” and its replacement by the word “shall” to underscore the fact all state-owned media shall be operated independently of the State and of other political or other influence.

In line with its proposal that State media be independent, the Committee recommends that the Managing Director and Chairman of the Seychelles

Broadcasting Corporation be appointed by the President subject to the prior approval of the National Assembly

#### Article 168 (2)

The Committee recommends the deletion of the words “and any other law, afford” and their replacement by the words “, provide fair and adequate”. The purpose of the proposed amendment is to prevent the eroding away of the stated independence in the Constitution of the state-owned media by an Act and secondly to ensure that a real and fair opportunity of access is given to the state-owned broadcasting media.

#### Article 168(3)

The Committee recommends the inclusion of a new provision that allows for the passing of a law for the regulation of the media generally.

### **Schedule 3 (Election of President)**

The Committee suggests that amendment consequential to its various proposals made before be made to the Schedule.

#### Paragraph 6

The majority of the Committee was of the view that a ballot should still be held even where there is a sole candidate as otherwise the people would be deprived of their fundamental right under article 24 of the Charter to participate in the election of the most important person (the Head of State) under the Constitution. Those same members also wonder about the legitimacy of a President elected by default.

The minority view was that this is just as valid an election as it is provided for under the Constitution.

### **Schedule 4 (Legislature)**

The Committee recommends that the Constitution, Political Parties (Registration and Regulation) Act (Chapter 173), the election law and other related legislation be revisited and provision be made therein to accommodate the formation of election and political alliances. The formation of alliances would impact on funding and entitlement to nominate a Member of the National Assembly. We

already had an example of this and the kind of issues that it carries in its wake in the SNP/DP alliance during the last national Assembly election.

#### Paragraph 4

As worded a political party is required to notify the Electoral Commissioner the names of persons the party has chosen as its proportionally elected members within 7 days of the election. The Committee is aware that this time frame is not always respected as it is unrealistic for a number of reasons including difficulty experienced by the Electoral Commissioner in determining which party, or how many members a party, is entitled to nominate. In order to prevent a party from unwittingly falling foul of the time frame the Committee recommends the insertion after the words “seven days” of the words “or such other longer period as the Electoral Commissioner may determine”. The Electoral Commissioner could in this way extend the 7 days if required.

# **CONSTITUTIONAL REVIEW COMMITTEE**

## **REPORT**

**21<sup>st</sup> December 2009**