



INITIAL STATE PARTY REPORT  
OF THE REPUBLIC OF SEYCHELLES

IMPLEMENTATION OF THE  
INTERNATIONAL CONVENTION ON THE  
PROTECTION OF THE RIGHTS OF ALL  
MIGRANT WORKERS AND MEMBERS OF  
THEIR FAMILIES

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## INTRODUCTION TO THE REPORT

1. The Republic of Seychelles' Report on the Implementation of the 'International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families' has been prepared through wide consultations with key stakeholders. It has been done according to guidelines provided in the "Provisional Guidelines regarding the form and contents of initial reports to be submitted by States Parties under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families" as outlined in HRI/GEN/2/Rev.2/Add.1. The report covers the whole country with all of its 155 islands.
2. The process of consultations involved individual meetings with key government officials from the Ministry of Health, the Ministry of Education, the Ministry of Labour and Human Resource Development (MLHRD) and the Immigration and Civil Status Department. The Seychelles Federation of Workers Union (SFWU) was also consulted as well as Civil Society Organisations, such as the Citizens Engagement Platform Seychelles and NGOs such as the 'Office for Migrants and Itinerant People'.
3. The Validation Workshop was held on Wednesday 8<sup>th</sup> July, 2015 with relevant stakeholders working to uphold human rights in the country in the fields of labour, social and economic development, civil and political rights as well as Civil Society Organisations.
4. The data collection phase also consisted of a desktop review. Relevant legislation and documents have been consulted, *a savoir*:
  - a) The Constitution of Seychelles
  - b) The Public Service Orders
  - c) The Employment Act of 1995
  - d) The Industrial Relations Act of 1993
  - e) The National Bureau of Statistics (NBS) Seychelles in Figures 2012
5. The report is organised in the following manner

- a) For each article of the Convention, the relevant articles of the Constitution, Government Acts and Orders of the Laws of Seychelles are presented to provide the corresponding legal and administrative framework.
- b) Statistics and data are provided to illustrate the implementation measures under each Article.

## COUNTRY PROFILE

6. Republic of Seychelles is an archipelago consisting of 155 islands (in accordance with the laws of Seychelles) located one thousand miles east of the African coast and spreading over 1.3 million km<sup>2</sup> of the western Indian Ocean and occupying an area of 455km<sup>2</sup>. About half of the islands are of granitic origin, with narrow coastal strips and central ranges of hills rising up to 900 m. The other half, are coral atolls, many of them uninhabited. The climate of Seychelles is of a tropical marine, humid cooler season during southeast monsoon (late May to September) and warmer season during northwest monsoon (March to May).
7. The people of Seychelles are known as Seychellois. Seychellois are considered multiracial: blending from African, Asian and European descent to create a modern creole culture. As of December 2014 the population of Seychelles was estimated at 92,126 persons. Most of the population, (76%) lives on the main island of Mahé whilst 11% live on the other two main islands – Praslin and La Digue. The official languages are English, French and Creole, with the latter being the native language of most Seychellois.
8. According to the 2010 Housing and Population census, most Seychellois are Christians: 76.2% were Roman Catholic, 6.1% were Anglican and 6.9% of other Christian denominations. There are small minorities who practice Hinduism (2.4%) and Islam (1.6%). Other non-Christian faiths accounted for 1.1% of the population while a further 5.7% were non-religious or did not specify a religion.
9. Key development indicators show that the literacy rate for Seychelles peaks at 94% for both males and females and as of mid 2014 the annual population growth rate was at 1.6% and the total fertility rate stood at 2.4 children born per women. The infant mortality rate has decrease to 10.9 as of mid 2014 as opposed to 18.5 in 2013. Seychelles shows a fairly high life expectancy of 72.3 years where male stands at 68.4 and female at 78.3 as of mid 2014.
10. According to the UNDP Human Development Index Reports 2011, the HDI was ranked 52<sup>nd</sup> out of 182 countries, a rise from 57 in the UNDP HDI report of 2009. For 2012, the

Seychelles' HDI value is 0.806, placing the country in the very high human development category. As a result, the country is now ranked 46 out of 187 countries and territories, with a HDI value that has risen from 0.774 to 0.806, an increase of 4% or average annual increase of about 0.3% between 2000 and 2012.

11. The Seychelles Gross domestic product based on purchasing-power-parity (PPP) per capita (GDP) has also steadily grown since independence in 1976 and continues to do so, e.g., it was estimated to be US\$24,800 in 2010, US\$25,800 in 2011 and US\$26,200 in 2012\* .

\*Data are in 2012 US dollars

**TABLE 1: Key development indicators for the Seychelles**

Indicators	2000	2010	2011	2012* /2013**
Population size (mid-year estimate)	81, 131	86, 525	87, 441	88, 303*
Age Distribution %				
0-14	26.3	22.7	22.4	22.3*
15-63	66.5	68.8	69.2	69.2*
64 and over	7.3	8.4	8.4	8.5*
Dependency Ratio	504	421	434	
Sex ratio (per 100 females)	98.5	104.6	97.3	96.3*
Total Fertility Rate	2.1	2.1	2.4	2.4*
Population Growth Rate	0.1	-0.9	0.95	0.92
Life Expectancy at Birth for both sexes (in years)	72.4	73.2	72.6	74.2

Males	69.1	67.7	69.3	
Females	77.5	78.0	79.5	
Gross National Income (GNI) per capita	7,390***	10,680***	11,270***	---
Human Development Index	0.774	0.799	0.804	0.806
Pop. with access to drinking water supply (%)	82.9	93	95	95
Pop. with access to sanitation	94****	97	---	---
Percentage of undernourished population	Year 1991	Year 1996	Year 2001	Year 2006
	11%	10%	8%	7%
Adult literacy rate (%) 15 years and above (both sexes)	90	94	---	---
Net enrolment rate in primary education (%)	99.6	111	107.4	101.3
Ratio of girls to boys in primary education (%)	1.00	0.99	1.00	1.00
Infant mortality rate (per 1,000 live births)	10.7 <sup>1</sup>	14.0	9.8	10.3*
				12.4**
Maternal mortality rate (per 100,000 live births)	0	133	0	0 / 1 death registered in 2013

\*Population and Vital Statistics No. 1 of 2013

\*\*Mid-year estimates for 2013

\*\*\*World Bank data

\*\*\*\*Year 2002

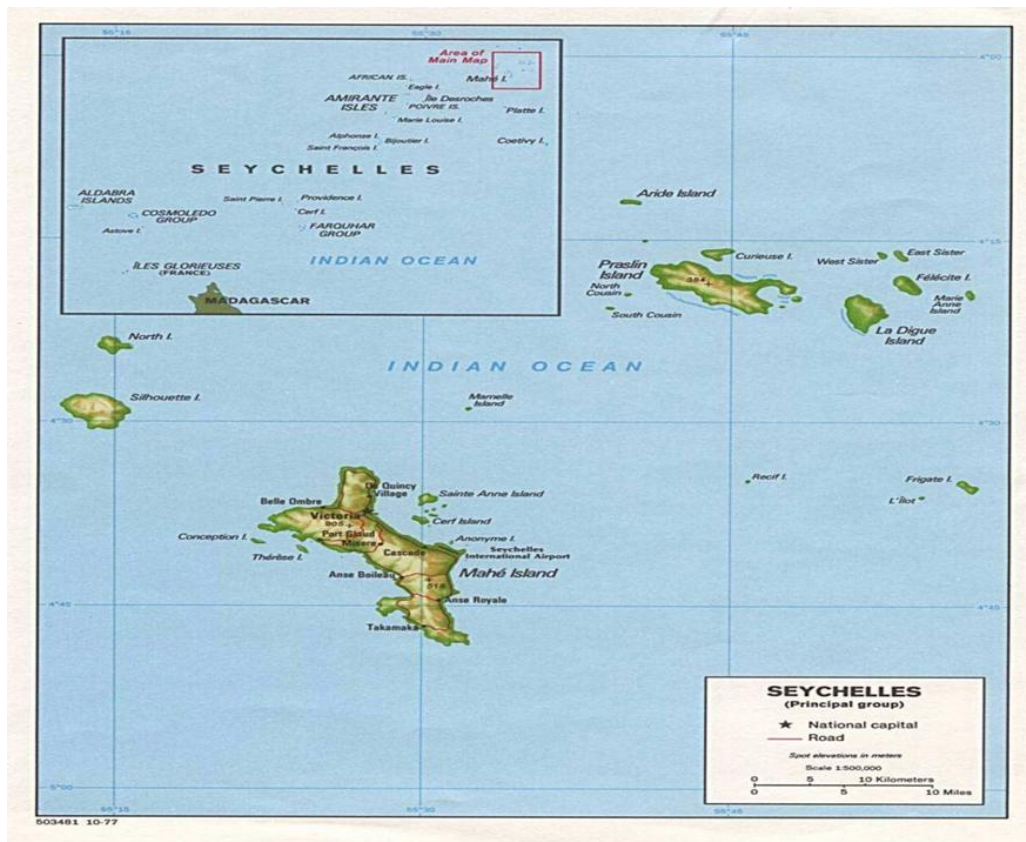
<sup>1</sup>Year 2007

12. The population mid-year estimates in 2014 stood at 92000. It mostly consists of the descendants of Africans, French, English and other Europeans, and Asians (Indian and



Chinese). Around 20% of the population is less than 15 years of age and 9% are aged 65 and over. There is 68% of the population in the 15 to 63 year bracket.

13. Most (76%) of the population lives on the main island, Mahé whilst 11% live on the other two main islands – Praslin and La Digue. The official languages are English, French and Creole, with the latter being the native language of most Seychellois and it is French-based. It is important to note that the Creole language (better known and written as Kreol) was introduced in primary education in 1982.



**CHART 1: Seychelles**

14. Demography in Seychelles is still characterised by slow rates<sup>1</sup>: growth, birth, death rate, and periodical emigration and immigration. On a smaller time scale, population growth between

<sup>1</sup>Ministry of Employment and Social Affairs, Social Development Division *National population Policy for Sustainable Development 2007*

June 2009 and June 2010 was actually -0.09%. In the longer term (from 1994 to 2010), annual growth rate is 1.3 and it is expected that the population will double in 54 years.

15. The country has also witnessed a rapid decline in total fertility rate which dropped from around 7 in 1966 to 4.2 in 1980. In 2006, the Total Fertility Rate fell to below replacement level at 2.1, but it has since risen to 2.3 by 2008. However, it has fallen once again to 2.1 by 2010<sup>2</sup>.

16. The projected population is given in Table 2 below.

**TABLE 2: Projected population of Seychelles 2012, 2022 & 2027**

Population	Mid-Year	2017	2022	2027
Males	44, 253	47, 500	49, 800	51, 900
Females	42, 272	48, 200	51, 000	53, 800
Total	86, 525	95, 700	100, 800	105, 700

(Source: NBS, 2010)

17. The Seychelles has achieved most of the Millennium Development Goals, with nearly 100% primary school enrolment for both girls and boys in most years, 100% immunization coverage for children aged 12 to 23 months, 96% adult literacy and 100% coverage for ARVs for PLHIV<sup>3</sup>. Abject poverty is virtually unknown in Seychelles, though it is acknowledged that there are pockets of poverty related to single mothers with numerous children, the disabled and the elderly. However, with the establishment of the Social Welfare Agency in November 2008, these issues are being addressed.

18. Whilst most of the MDGs have been achieved, there are still some gaps<sup>4</sup>. However, it is generally felt that these can be surmounted sooner rather than later. Indeed, the Seychelles

<sup>2</sup> National Bureau of Statistics *Seychelles in Figures 2011* p.9

<sup>3</sup> Ministry of Foreign Affairs *Seychelles Millennium Development Goals: Status Report 2010* p.122

<sup>4</sup> Ibid; p. 122

has begun reflection on MDG Plus, with a number of higher-end objectives in mind. Moreover, there are various national sectoral strategic plans being discussed and written to ensure that gains are maintained and that new targets are set. These include national plans, such as the *National Development Plan*, the *Draft Mid-Term National Strategic Plan 2011-2013* and the *National Capacity Development Plan*.

19. Other sectoral plans being worked on towards the end of 2011 include the *National Cultural Policy and Strategic Plan*, the *National Policy on HIV and AIDS and Other STIs*, the *National Reproductive Health Plan*, the *National Strategic Plan on HIV and AIDS*, a *Master Plan for Tourism*, another for the judiciary and a *National Strategic Plan for the Rehabilitation of Perpetrators and Victims of Gender-Based Violence*.
20. The main issues in national development in Seychelles are data collection, collation, storage and use (information management), capacity building and coordination. All plans are to be aligned to the National Development Strategy 2015- 19 to ensure coherence, comprehensiveness and coordination.
21. In recent years, piracy originating from Somalia has been a major national development issue. The sustained attacks on commercial and recreational shipping in the Indian Ocean region and in the waters of Seychelles have led to severe economic consequences. Receipts from tuna dropped by 30% in the third quarter of 2009. More than \$US4million of the country's \$US100million economy is now spent annually on sea patrols by the Seychelles Coast Guard. Money set aside for infrastructure, health, education and other national matters is now being diverted to matters of defense and national security<sup>5</sup>.
22. Piracy is a cause for concern as the two mainstays of the Seychelles economy are tourism and fishing. In the case of tourism, a number of cruise ships visit the islands and there is more tourism development on the outer-lying islands which are less well protected than Mahé, the main island. As for fishing, the threat of piracy has increased insurance premiums, has led to

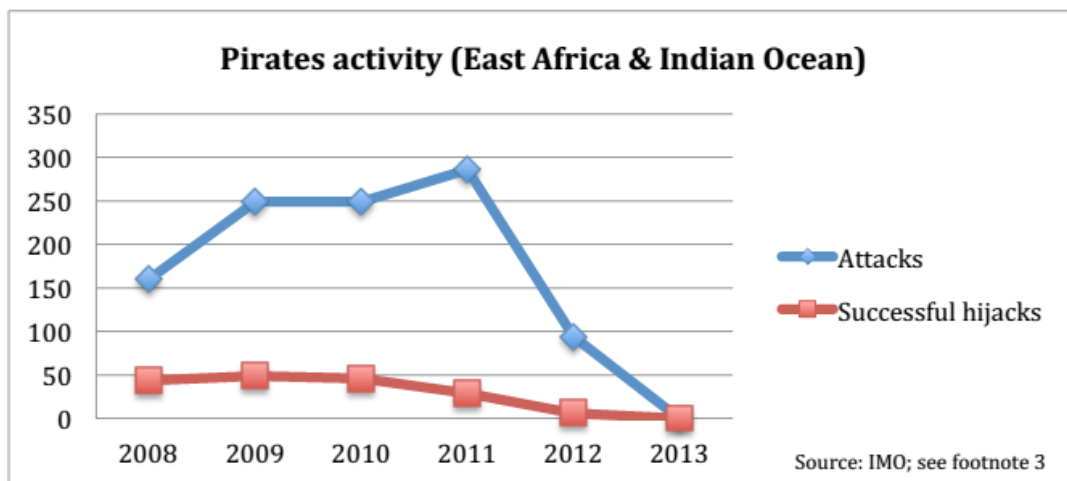
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<sup>5</sup> UNODC Brochure Issue 6, June 2011 *Counter-Piracy Programme: Support to the Trial and Related Treatment of Piracy Suspects*

some vessels having armed guards on board and some reduction in the number of purse seiners coming to unload in Victoria. This has resulted in some work stoppages in the tuna factory also based in Victoria.

23. However, the Seychelles government and its partners have taken proactive steps which have led to a significant reduction in attacks and successful seizures of ships and crew. Programmes and actions include the Anti-Piracy Prosecutions Intelligence Coordination Centre (RAPPICC) established in February 2013, which collates experts from around the world to share intelligence and information to tackle the financiers of piracy. Collaborative efforts have been forged with countries such as India, the United Arab Emirates (UAE) and the USA. Pirate attacks in the region have dropped from 46 in 2010 to zero from May 2012 to May 2013 (Figure 1).

**Figure 1: Pirate attacks in the Indian Ocean from 2008 to 2013**



24. However, it is important to note that the NBS-conducted surveys on visitor safety show that generally tourists feel safe in Seychelles. The latest survey done in 2010 showed that in 2008, 93% of visitors felt secure whereas in 2010, 95% felt secure. Only 2.3% reported having

been attacked while 3.6% felt threatened in 2008 compared to 1% who were attacked and 2.5% who felt threatened in 2010<sup>6</sup>.

25. Most incidents reported by the visitors took place during the day with the majority of them having occurred on beaches where the percentage of personal attacks and threats on beaches and hotels increased in 2010 compared to 2008. Regarding the loss of belongings, most incidents of loss occurred on beaches and in hotels. One notable issue is the fact that incidence of loss occurring at hotels increased.

### **Historical and Political Background**

26. The Seychelles has a 260 year history, beginning in 1742 when a French expedition from Mauritius reached the islands. A formal claim was made. French settlers and their slaves were the first to have a permanent foothold in Seychelles. Over the years, after the French Revolution of 1789, and more specifically the first capitulation in 1794, and throughout the Napoleonic Wars, the islands' possession alternated between France and Britain several times. Finally, the Seychelles were ceded to Britain in 1815 when the Treaty of Paris entered into force. The islands, though, were administered as a dependency from Mauritius until 1903.

27. Political activity by the islanders began in earnest in 1948 after WWII, when Britain granted suffrage to about 2, 000 adult male property owners. In 1964, two political parties emerged: the Seychelles People United Party (SPUP) and the Democratic Party (DP). With the formation of these two major parties, political development and involvement grew until Britain, through a series of constitutions, granted ever new concessions which culminated in complete independence on June 29, 1976.

28. In 1977, there was a coup d'état which led to the formation of a one-party state under the SPUP, which became the Seychelles People Progressive Front (SPPF). In 1991, the SPPF Congress adopted a resolution to have multi-party politics in the country. Since then,

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<sup>6</sup><http://www.nbs.gov.sc/wp-content/uploads/2011/10/Visitor-Safety-Security-Survey-Report3.pdf>

Presidential and National Assembly elections have been held on a regular basis: July 1993, March 1998, early Presidential elections in September 2001, National Assembly in December 2002, with the most recent ones being held in May and October 2011, respectively.

29. All Presidential elections have been won by the SPPF, now renamed the People's Parti ("Parti Lepep") and all National Assembly elections have brought in a majority of Parti Lepep candidates, with the latest results being that all 34 seats were taken by the same party. The Opposition Party, the Seychelles National Party (SNP) boycotted the last elections. A new party, the Popular Democratic Movement (PDM), took part in the National Assembly elections and did not obtain a single directly elected seat in the National Assembly.
30. However, the PDM leader, Mr. David Pierre, petitioned the Constitutional Court to have a member of the party named as a proportionally elected member in the National Assembly, arguing that *"when the total number of votes polled by the candidates of the petitioner namely 3828 votes is calculated in respect of the total valid votes in the general election namely 35145 votes, the petitioner clearly polled 10.89% of the votes cast and hence the petitioner is entitled to nominate one proportionally elected member of the National Assembly"*<sup>7</sup>.
31. The PDM received a judgement against its petition before the Constitutional Court and launched an appeal to the Seychelles Court of Appeal. The main issue was the basis on which to consider the votes of the electorate. The votes polled by PDM at the 2011 General Elections, if determined on the basis of the total votes cast, worked out to 7.4% and if determined on the basis of valid votes, 10.9%. The Court of Appeal rendered a judgement in favour of the petitioner and since then, the PDM has one proportionally elected member in the new Seychelles National Assembly, Mr. David Pierre, who is also the Leader of the Opposition.

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<sup>7</sup><http://www.saflii.org/sc/cases/SCCC/2011/9.pdf>

## Form of Government

32. The Seychelles form of government is a Presidential System based on the principle of the Separation of Powers, i.e., between the Executive, the Judiciary and the Legislative. The President holds the office of the Head of the Ruling Party, Head of State, Head of Government, and Commander-in-Chief of the Defense Forces. The Presidency is limited to three terms of five years each.

## The Constitutional Human Rights Framework

33. The Seychellois Charter of Fundamental Human Rights and Freedoms forms part of the Constitution (Chapter III)<sup>8</sup> and it reflects the many fundamental precepts of human rights instruments to which Seychelles is a party. It consists of 25 basic human rights and freedoms (Table 3).

**Table 3:** List of Fundamental Rights and Freedoms:

Article Number	Rights and Freedoms
15	Right to life
16	Right to dignity
17	Freedom from slavery and forced or compulsive labour
18	Right to liberty
19	Right to fair and public hearing
20	Right to privacy
21	Freedom of conscience
22	Freedom of expression
23	Right of assembly and association
24	Right to participate in Government
25	Freedom of movement
26	Right to property
27	Right to equal protection of the law
28	Right of access to official information
29	

<sup>8</sup> The Constitution of Seychelles, 1993

30	Right to health care
31	Right of working mothers
32	Right of minors
33	Protection of families
34	Right to education
35	Right to shelter
36	Right to work
37	Right of the aged and the disabled
38	Right to social security
39	Right to safe environment
	Right to cultural life and values

## Ombudsman

34. Various mechanisms have been established to ensure that human rights are upheld. Articles 143 and 144 provides for the setting up of the Office of the Ombudsman. Schedule 3 of the Constitution sets out the powers, mandate and other terms of the Ombudsman. The Ombudsman is appointed by the President from candidates nominated by the Constitutional Appointments Authority and serves a term of seven years which is renewable.
35. Under the Constitution, Ombudsman investigates any public authority up to and including the President (Schedule 5, 1(1) (a)). The investigations may include complaints of violations of fundamental human rights and allegations of corruption by public officials (Schedule 5, 1(1) (b); 1(2) (a)). Schedule 5 also places restrictions on what may be investigated. The President or a cabinet minister may halt an investigation by certifying that the matter "*may affect the relation or dealing between the Government of Seychelles and any other Government or international organisation, the security of the Republic or the investigation of crime*" (Schedule 5, 2(a)). The Ombudsman may also not investigate the performance of any judicial function or a person performing a judicial function (Schedule 5, 2(b)).



36. Powers to subpoena testimony and documents and of access to premises are similar to those of a judge of the Supreme Court, but these are restricted by the right of the President or the Attorney-General to issue certificates restraining the Ombudsman under certain conditions (Schedule 5, 4). In the case of the President the certificate must be based on prejudice to the security of the Republic or its international relations or because it requires the disclosure of Cabinet discussion and in the case of the Attorney-General because it may prejudice a criminal investigation.
37. If wrongdoing is found the Ombudsman is empowered to send a report to the relevant executive authority detailing findings, the basis for them, recommendations and remedies that are required and may include a reasonable time limit within which the measures are to be acted on (Schedule 5, 6(1), (3)). If the report is not acted upon in a timely manner, the Ombudsman may submit the report to the President or the National Assembly to act on (Schedule 5, 6(4)). The Ombudsman is required to make an annual report in January to the National Assembly on the work performed in the previous year (Schedule 5, 6(6)).
38. A new Act, the Protection of Human Rights Act 2009, provides for the Ombudsman to take on the chairmanship of the National Human Rights Commission.

### **Public Service Appeal Board**

39. The PSAB is an important key in the achievement of the rights of the workers employed as public officers. Subject to the Constitution, Article 145(2), this board *"shall not, in the performance of its functions, be subject to the direction or control of any person or authority"* and it deals with different issues apart of those originated from disciplinary proceedings.
40. Article 146 (1) of the Constitution notes that: *"The PSAB shall hear complaints by persons aggrieved by*
- a) an appointment made to an office;*
  - b) a promotion to an office;*
  - c) disciplinary proceedings taken in respect of an officer;*

- d) *the termination of appointment of a person who was holding an office;*
- e) *any decision relating to the qualification of a person; in the public service".*

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

## **The Judiciary**

42. According to Article 119 of the Constitution, the judicial powers of Seychelles shall be vested in the Judiciary which shall consist of –

- The Court of Appeal of Seychelles
- The Supreme Court of Seychelles
- and such other subordinate Courts or Tribunals established pursuant to Article 137.

43. The Constitution orders that the Judiciary shall be independent and be subject only to the Constitution and other laws of Seychelles. Justices of Appeal, Judges and Masters of the Supreme Court are not to be liable to any proceedings or sued for anything done or omitted by them in the performance of the functions.

44. The Judiciary consists of mixed legal systems based on the English Criminal Law, the French Civil Law and Customary Law.

## **The Executive**

45. The Public Service Functions Manual states that “The Executive Authority of the Republic of Seychelles is vested in the President and shall be exercised in accordance with the Constitution. Subject to the Constitution, the President may exercise the executive authority either directly or through persons holding office in the service of the Republic.”

46. The Head of State is President James Alix Michel (since 14 April 2004). The President is both the Head of State and Head of Government. The last election was held from the 19<sup>th</sup> to the 21<sup>st</sup> of May 2011. The next Presidential election is scheduled to be held in 2016.

## **The Legislative**

### *The National Assembly of Seychelles*

47. As prescribed by the Constitution, the National Assembly of Seychelles consists of:

- such number of members directly elected in accordance with the Constitution, and subject to the Constitution, an Act, as is equal to the number of electoral areas,
- not more than 10 members elected on the basis on the scheme of proportional representation.

48. Consequently the National Assembly of Seychelles consists of 25 members directly elected from the electorate and not more than 10 members elected on the basis of proportional representation.

49. The following positions exist: a Speaker of the National Assembly as the head of the legislative branch of Government, the Leader of Government Business from the Ruling Party, the Leader of the Opposition and the Deputy Speaker. The National Assembly has the exclusive power to make, pass and amend laws, which are subject to the approval of the President. The laws may be proposed by the President, a Minister and a Member of the National Assembly.

## **Economy and Financial Sector**

50. The Government of Seychelles has embarked since the early 1990s in major reforms of the political system as well as economic and social policies. The two main objectives of those reforms are to increase income per capita with the aims of improving living conditions of the Seychellois population and to establish sustainable macroeconomic balances.

51. Seychelles is a middle-income island economy recovering from a 2008 debt crisis and is at an advanced stage of transition into a market economy. The average real growth rate of nominal GDP for the period 2008-2013 amounts to 2.7% annually.

52. Seychelles has been successful in major reforms undergone macroeconomic adjustment between 2008 and 2013. Reforms in terms of economic and social policies have sought to promote a lean and efficient public sector providing a stimulating environment for the development of the private sector without compromising social concerns and environmental sustainability (green economy). The diversification of the economy from primarily tourism is also sought in the medium run with further development of the fisheries sector, underwater resources exploitation (blue economy), and financial services sector.
53. The tourism, fisheries and the financial sectors together employ about 40% of the total workforce. Tourism accounts for 29% of GDP and 27% of employment.
54. The fisheries sector, including fishing and fish processing, is the second pillar of the economy. Seychelles boasts an exclusive economic zone of 1.4 million square kilometres in one of the world's major tuna fishing grounds. The economic contribution of the fisheries sector accounts for approximately 40% of current account receipts in 2013. Gross inflow of foreign currency generated by the sector stood at SR 5.6 billion in 2013. Employment in the fisheries sector constitutes about 10% of formal employment.
55. The International Financial Sector has become a more important component of the financial sector. They accounted for 5.9% of GDP in 2013. Ongoing reforms in the financial sector aim at fostering the implementation of a number of new initiatives. Among the priority areas are improving the financial systems, legal and regulatory frameworks, improving access to credit for small and medium enterprises, consumer protection and financial literacy as well as ongoing training of financial sector professionals in compliance with money laundering, as well as training of financial sector professionals.
56. Overall, social development and governance represent each 36% of total expenditures while, economic development receives 22% and environment and energy 6%.

## LABOUR AND EMPLOYMENT IN THE SEYCHELLES

### International obligations and national standards

57. Seychelles has ratified 36 International Labour Organisation (ILO) conventions, 26 of which are presently in force; the conventions have guided the development of the country's labour and employment laws. These include the following: the Employment Act 1995; the Industrial Relations Act 1993 and the Occupational Health and Safety Decree. These laws have been reviewed to adjust to changes in the macro economic framework in compliance to ratified International Labour standards.
58. At the regional level, the Seychelles has signed specific and thematic labour protocols such as the Southern African Development Community (SADC) Code of Conduct on HIV and AIDS and Employment in the Southern African Development Community, 1997 and the Global Jobs Pact in Africa (Ouagadougou, 2009). The former aims to remove discrimination of PLHIVs in the workplace and in employment, whilst the latter seeks to orient relevant national and international policies stimulate economic recovery through the seamless process of creating sustainable enterprises, generating decent productive jobs, providing social protection.
59. The Employment Act makes provision in Article 67 that *“Non-Seychellois workers, not exempt from the provisions of this Act, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers but may be given such additional benefits and privileges as the competent officer may authorize.”* It also makes provision for the Employment Tribunal which functions as a quasi-judicial Court.
60. Seychelles has also endorsed the Decent Work Country Programme (2011 - 2015), which seeks to improve work conditions throughout the workplace and in all employment and labour. It is also a tool for cooperation with the ILO. The Programme has for strategic objectives, which concentrates in the areas of employment, rights at work, social protection and social dialogue. The Programme's three core priorities are identified as (1) to review

labour legislation and strengthen the dispute resolution framework; (2) Promotion of quality employment and reduction of unemployment, particularly for women and youth; and (3) promotion of effective tripartism and Social dialogue.

### **Procedures to employ migrant workers**

61. To be employed in the Seychelles, a person needs a Gainful Occupation Permit (GOP) and the same applies to an employer or a self-employed person.
62. Applications of posts for recruitment of non-Seychellois workers must first go through the MLHRD. The applications are assessed on the basis on the needs of labour market, and as per the current quota of foreign workers. The MLHRD also verifies compliance of the Employment Act by the respective recruiting organizations. The application form is to be completed by the person seeking the permit in the case of a self-employed or by the prospective employer.
63. There are various considerations for the application for a GOP. These can include
  - a) The character, reputation and health of the prospective employee and where relevant, any member of his/her household to be endorsed on the permit.
  - b) The professional or technical qualification of the person to be employed.
  - c) The availability of the services of persons already exist in Seychelles.
  - d) The protection of local interest.
  - e) the economic and social benefit which the applicant / prospective employee may bring to Seychelles or enhance by his presence.
64. The MLHRD reviews the contracts of foreign workers and attests the same upon the arrival of the migrant worker. Contracts of employment must be attested within one month of the arrival of the Migrant Worker into the country.

## **Key organizations**

### A. Employees' organizations

65. The Seychelles Federation of Workers Union (SFWU) was formed in 1996 after the National Workers' Union was dissolved after the re-introduction of multiparty democracy in Seychelles. The National Workers Union in the one party socialist era was given an educative role whereas its bargaining function as a trade union was mainly absorbed by the government which had taken the role of economic generator in a centrally planned economy.

### B. Employers' Organizations

66. The Federation of Employers' Association of Seychelles was registered with the Registrar of Associations in 1978. With the promulgation of the Industrial Relations Act in 1993 the FEAS had to form an employer's union, the Association of Seychelles Employers and was registered under the Act. The Association has taken over the Federations' role in labour matters, training and tripartism. Membership comes from open trade businesses, professional and employers' associations and the chamber of commerce and industry as well as public corporations.

### C. The Ministry of Labour and Human Resource Development

67. The Ministry of Labour and Human Resource Development is the arm of the Government of Seychelles critically charged with the responsibility to monitor the labour market with a view to render it conducive to economic and social enhancement. Through its programmes the Ministry is responsible for developing, promoting and monitoring employment laws, regulations and policies governing a wide range of issues including:

- Improved economic efficiency and productivity;
- Skills development and facilitating employment growth;
- Sound industrial relations;
- Enhance occupational health and safety awareness and compliance in the workplace;
- Promote equality and non-discrimination in the workplace.

There is the Industrial Relations Section at the MLHRD whereby all workers including migrant workers may seek advice from the employment officers on the rights and working conditions. The worker may register his/her grievance which then goes into a process of mediation with the aim of seeking a mutual agreement between the worker and employer. If the mediation fails, the worker is given a certificate and he/she has the right to register the case with the Employment Tribunal.

#### D. Agency for National Human Resource Development (ANHRD)

68. The ANHRD has the mandate to promote and coordinate policy interventions which lead to the development of human resources in Seychelles. One of its main tasks is to work on the National Human Resources Plans to coincide with the Seychelles Strategy Plans and the Seychelles Integrated Human Resources Strategy.

#### **Employment**

69. In 2010, the labour force comprised of 52, 182 persons, of which 49, 169 were working. Unemployment has steadily dropped from 6% in 2010 to virtual full employment in early 2011, with the rate noted at 2.3%. Rapid development coupled with the country being a small island state means that the Seychelles will continue to rely on foreign workers, presently some 25% of the total workforce, with most employed in tourism and the construction industry (Table 4).

**TABLE 4: Population aged 15 years or more by Economic Status**

	<b>Female</b>	<b>Male</b>	<b>Total</b>
<b>Working population</b>	33,966	36,583	70,549
Public Sector	8,797	5,986	14,783
Private Sector	12,784	21,602	34,386
<b>Unemployed</b>	1,622	1,391	3,013
<b>Inactive</b>			
Students	2,714	2,165	4,879
Other	7,776	5,114	12,890
Not stated	273	325	598
<b>Labour Force</b>			
100%	23,203	28,979	52,182
Working 94.2%	21,581	27,588	49,169



Unemployed 5.8%	1,622	1,391	3,013
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**Source:** *National Bureau of Statistics, Population & Housing Census 2010*

70. The National Bureau of Statistics (NBS) conducted a Labour Force Survey in 2011/2012 to develop and improve the compilation of national statistics for policy planning, monitoring and evaluation on employment and labour. Previous surveys were conducted in 1985, 1992, 2005/2006. The previous surveys did not take into account migrant workers in the private sector and thus included only those in the public sector. The 2011/2012 Survey included all workers in Seychelles.

**TABLE 5: Working age population, Labour Force (by employed, unemployed) and population not economically active (by reason) by sex, 2011/2012**

	Male	Female	Both sexes
<b>Working age population</b>	30,840	33,290	<b>64,130</b>
Labour Force	21,060	20,610	<b>41,670</b>
Employed population	96.2	95.5	<b>95.9</b>
Unemployed population	3.8	4.5	<b>4.1</b>
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
Population not active	7,240	10,660	<b>17,900</b>
In school or training	29.6	21.1	<b>24.5</b>
Family responsibilities, housework	1.2	9.0	<b>5.8</b>
Pregnancy	-	1.5	<b>0.9</b>
Illness, injury or disability	18.7	14.1	<b>16.0</b>
Retired or too old to work	35.7	43.4	<b>40.3</b>
No desire to work	3.9	2.1	<b>2.8</b>
Other reason	4.9	3.7	<b>4.3</b>
Not stated	6.0	5.0	<b>5.5</b>
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Source:** *National Bureau of Statistics, LFS 2011/2012*

*Notes: Numbers in italics are %. Counts are given to nearest tens.*

71. In 2011/2012, the labour force was composed of 64,130 persons of whom 30,840 were males and 33,290 were females. The employed population totaled 41,670 or 95.9% of the work

force, with 21,060 or 96.2% males and 20,610 or 95.5% females. The percentage of the work force employed was 95.9% which is slight increase from 2010 when it was 94.2%.

### **Migrant Workers in Seychelles**

72. Migrant workers in Seychelles have increased from some 2000 in the 1990's<sup>9</sup> to 10,923 in 2009 (Table 6). In 2012, there were 12,430 migrant workers. The private sector was the largest employer with 2,264 in 2001 and 10,445 in 2009.

**TABLE 6: Expatriate employment in Seychelles 2001 and 2009**

Sector	Years	
	2001	2009
Private Sector Expatriate Employment	2,264	10,445
Public Sector Expatriate Employment	390	109
Parastatal Expatriate Employment	164	369
Total Expatriate Employment	2,818	10,923
Total Unemployment	1,869	1,001 <sup>6</sup>
Gap between Expat Employment and Unemployment	949	7,495

**Source: M.E.E.H.R. 2010**

73. Foreign labour supply in the Seychelles is varied, from professionals and managerial cadres to skilled workers such as carpenters and masons. The greatest number of migrant workers is to be found in the construction industry. The majority of construction workers live in institutional residences. The Seychelles Bureau of Statistics approached the 10 largest construction companies to request completion of the relevant questions from the Labour Force Survey questionnaire relating to the fourth quarter of 2011. However, responses were only received from half of the selected companies.

74. Data provided in the Labour Force Survey 2011/2012 comes from 2,148 or 20% of the migrant workers in the construction industry and is composed, according to the NBS, of detailed reliable data on occupation, income and nationality.

<sup>9</sup>[http://www.mongabay.com/history/seychelles/seychelles-ethnic\\_groups.html#rjP41thfc74w5i46.99](http://www.mongabay.com/history/seychelles/seychelles-ethnic_groups.html#rjP41thfc74w5i46.99)

## Predominance of young males

75. Migrant workers in the construction industry are predominantly male, married and young. Sixty-five percent of the migrant population in this industry is younger than 35 years, with about 76% of them in the prime working age (25-54 years) and less than 1% above 54 years. At least 24% of them are within the youth age bracket of less than 25 years (Table 7 and 8).

**TABLE 7: Age of migrant workers in the construction industry**

Age group (years)	Total	valid %
Less than 25	392	23.5
25 < 29	339	20.3
30 < 34	354	21.2
35 < 39	278	16.6
40 < 44	181	10.8
45 < 49	75	4.5
50 or more	51	3.1
Not stated	478	
<b>All ages</b>	<b>2,148</b>	<b>100.0</b>

Source: National Bureau of Statistics, LFS 2011

**TABLE 8: Age and marital status of migrant workers in the construction industry**

	No. workers		Age group (years)			
			Under 25	25-54	50 or more	All ages
		%	%	%	%	%
<b>Marital status</b>						
Single	210	9.8	85.2	14.8	0.0	100.0
Married	1,388	64.6	13.8	85.5	0.6	100.0
Other	...	...				
Not stated	548	25.5	...	...	...	...
<b>Total</b>	<b>2,148</b>	<b>100</b>				

Source: National Bureau of Statistics, LFS 2011

76. Most of the workers are from the Asian continent, especially from India and Sri Lanka, representing 96% of the total. The other nationalities are in the minority with less than 1% from the African continent and others (2.7%).

**TABLE 9: Nationalities of migrant workers in the construction industry**

<b>Nationality (region)</b>	<b>%</b>
Africa	0.9
Asia	96.5
Other	2.7
<b>All nationalities</b>	<b>100.0</b>

*Source: National Bureau of Statistics, LFS 2011*

### **Predominance of craftsmen**

77. Jobs in the construction industry are concentrated in the Craft and Related Trade major group of the occupation classification, which comprises of section groups builders (masons and carpenters), painters, electricians and metal workers. Three quarters (75.3%) of migrant workers were in this group (Table 10). It is interesting to note that nearly 60% of the migrant workers are in the minor groups building frame builders and finishers whilst 6% work with sheet metal and welding. Fewer than 2% of migrant workers in construction are managers but one in every 10 is a professional or technician and associate professional.

**TABLE 10: Migrant workers by occupation and earnings**

Occupation	%	Mean hourly earnings (R)
<b>Managers</b>	<b>1.3</b>	<b>150.2</b>
Professionals	4.6	123.7
Technicians and Associate Professionals	5.8	61.5
Clerical Support Workers	1.6	49.5
Service and Sales Workers	4.2	39.0
<b><u>Craft and Related Trade Workers</u></b>	<b><u>75.3</u></b>	<b><u>32.3</u></b>
<i>of which:</i>		
<i>Building frame &amp; related workers</i>	59.6	31.3
<i>Building finishers &amp; related trade workers</i>	4.3	35.9
<i>Painters, building structure cleaners &amp; related workers</i>	2.7	33.4
<i>Sheet &amp; structural metal workers, moulders &amp; welders, &amp; related workers</i>	5.7	34.8
<i>Metal working machine tool setters &amp; operators</i>	2.3	41.9
<i>Electrical installers &amp; repairers</i>	0.8	39.8
Plant and Machine Operators and Assemblers	4.2	36.9
Elementary Occupations	3.0	31.7
<b>All occupations</b>	<b>100.0</b>	<b>40.3</b>

Source: National Bureau of Statistics, LFS 2011

### Salary discrepancies

78. Managers are the most highly paid group, earning an average of SR150 per hour. This is around 5 times what a craft and related worker earns per hour. The Labour Force Survey 2011/2012 notes that “*Within the latter group, metal workers earn the most at SR42 (sic) per hour compared to building frame builders who earn SR31 per hour. Technicians and Associate Professionals earn around SR62 per hour which is half of what full professionals earn. Among the major occupation groups, elementary workers earn the least, but they account for only 3% of all occupation groups.*”

79. The Agency for Human Resource Development, the Immigration Division and the Department of Public Administration data shows that in 2012, most workers come from India (6612 or 53%), followed far behind by Madagascar (882 or 7%) and other nationalities (817 or 7%). The majority of the workers from India are employed as masons in the construction

industry. The majority of the Malagasy workers are fish cleaners working at the Indian Ocean Tuna Factory and the other nationalities are for the most part doctors (Table 11).

**TABLE 11: Country of origin and expatriates in 2012**

Nationality	Total	Percentage	Majority work category	Majority employment sector
India	6612	53	Mason	Construction
Madagascar	882	7	Fish cleaner	Manufacturing
Philippines	549	4	Fish cleaner	Manufacturing
Mauritius	545	4	Technician – Maintenance	Accommodation & Food service Activities
Kenya	511	4	Fish cleaner	Manufacturing
Sri Lanka	506	4	Carpenter	Construction
Bangladesh	444	4	Farm worker	Agriculture, Forestry & Fishing
Nepal	349	3	Security guard	Accommodation & Food service Activities
South Africa	232	2	Carpenter	Construction
Thailand	232	2	Fish cleaner	Manufacturing
China	206	2	Carpenter	Construction
Indonesia	195	2	SPA Therapist / Attendant / Technician	Accommodation & Food service Activities
France	127	1	Waiter / Waitress – Wine	Accommodation & Food service Activities
Great Britain	126		Teacher	Education
Russia	97	1	Owner / Shareholder / Manager / Director / Representative	Accommodation & Food service Activities
Other nationalities	817	7	Doctor	Human Health & Social Work Activities
<b>Total</b>	<b>12430</b>	<b>100%</b>		

**Source:** *Immigration Division, SIBA, DPA and NHRDC (2012)*

## **IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICPMW)**

80. The *International Convention on the Protection of the Rights of all Migrant Workers and members of their Families (ICPMW)* was acceded to by Seychelles on 15<sup>th</sup> December 1994 and it came into force on 1<sup>st</sup> July 2003, when it came into force generally for all States Parties.

### **Right to freedom of movement to and from countries of origin**

81. Migrant workers are allowed to travel in and out of the country during their period of employment. There are no restrictions imposed by the law, apart from those to maintain law and order and those normally found in a democracy.

### **Right to life**

82. The death penalty has been abolished in the Seychelles since 1995 with an amendment of the Penal Code. The Constitution (Article 15) guarantees the right to life and that no sentence of death can be imposed by any court. Exceptions are in relation to lawful acts of war. This fundamental right is further strengthened in the Constitution (Article 25.4) which prevents extradition of persons to countries where the death sentence is in force. A person cannot be extradited if the death sentence is to be applied in respect to the offence committed, unless the country concerned agrees to suspend it for that instance in that particular case.

83. The Penal Code also specifies various sentences that can be applied in lieu of the death penalty: imprisonment, fine, payment of compensation, police supervision, forfeiture and any other punishment provided by the Code and any other law. This applies to all Seychellois and residents, including migrant workers.

84. There have been no reports of extrajudicial killings of migrant workers. Cases of accidents and murders regarding migrant workers are handled administratively and judicially through

nationally established mechanisms, and are the same as for citizens of Seychelles. More specifically, accidents occurring at workplaces should be reported to the Ministry within 48 hours from the time of accident. In case there is gross negligence on the part of the employer, this may lead to prosecution before the Magistrate court of Seychelles. The MLHRD also encourages employers to notify the MLHRD of the death of a worker notably occurred on the way to work.

### **Right to freedom from torture or cruel, inhuman or degrading treatment or punishment**

85. The Constitution in Article 16, states that: “*Every person has the right to be treated with dignity worthy of a human being and not be subjected to torture, cruel, inhuman or degrading treatment or punishment*”. This is further consolidated by Article 18 (1) of the Constitution which states that: “*Every person has the right to liberty and security of the person*”.

86. This right is guaranteed on the same basis as to the citizens of Seychelles.

### **Right to freedom from slavery, servitude or forced compulsory labour**

87. Seychelles has ratified two relevant Conventions under the International Labour Organization, namely the ‘Forced Labour Convention, 1930 (No.29)’ and the ‘Abolition of Forced Labour Convention, 1937 (No. 105)’.

88. Slavery was officially abolished in 1835 in the Seychelles. The Constitution in Articles 16 and 17 establishes that “*every person has a right to be treated with dignity worthy of a human being and not be subjected to torture, cruel, inhuman or degrading treatment or punishment.*” These articles are further supported by Section 251 of the Penal Code 1955, updated in 1996, which also makes provisions for the illegality of the importing, removing, buying, selling, detaining, receiving, accepting or disposing of any person.



89. The Penal Code prohibits and prescribes a punishment of three years' imprisonment for forced labour. Section 249 of the Penal Code outlaws slavery and prescribes penalties of 10 years' imprisonment. Sections 155, 156, and 138 of the Penal Code outlaw brothel-keeping, pimping, and procuring women or girls to engage in prostitution within Seychelles or abroad, prescribing punishments of three years', five years', and two years' imprisonment, respectively.
90. The Employment Act makes provision for regular payment of salaries in Article 32(2) which states that *'Wages payable in cash are payable at regular intervals as agreed between employer and worker but not less than once a month and not later than the fifth day following the date on which they fall due.'*
91. Furthermore, The Employment Act Section 35 (1 and 2) also stipulates that records of wages due are to be kept at the place of employment and be available for inspection by a competent officer. In Article 36(2), *'Where an employer fails to comply with subsection (1) and there is a dispute over the fact of payment, a presumption that the employer has not made payment arises against the employer.'*
92. The MLHRD conducts inspections and monitors working conditions of migrant workers. Claims related to rights of migrant workers are often fast-tracked by the MLHRD, thus reducing the necessity of court involvement through active mediation. Necessary legal actions are also taken against companies which are found to be in violation of the rights of migrant workers.
93. Seychelles put in place formalized legislation to combat trafficking in persons in 2014, namely the 'Prohibition of Trafficking in Persons Act, 2014'. A National Coordinating Committee on Trafficking in Persons has been established through this law, as well as a formalized Fund for trafficking in persons. The Government has held numerous training activities on trafficking in persons, including for front-line officers, non-governmental organizations and journalists. The Government is also in the process of implementing a two year National Action Plan and Strategic Framework on Trafficking in Persons, as well as a

Standard Operating Procedure Manual and a Referral Mechanism for victims of trafficking in persons. A two month media campaign was held to raise awareness of trafficking in persons in 2014/5, which looked at migrant workers as one of the groups vulnerable to being trafficked.

### **Right to freedom of thought, expression, conscience and religion**

94. Freedom of expression is provided for in Article 22 of the Constitution, which includes the “*freedom to hold opinions and to seek, receive and impart ideas and information without interference*”. Article 22 (2) provides for six areas of restrictions to this right “*as may be prescribed by a law and necessary in a democratic society*”. They are applied on an equal basis as to a citizen of Seychelles.
95. Freedom of thought, conscience and religion is guaranteed in the Constitution under Article 21, which stipulates that every person has a right to freedom of conscience. The issue of religion is made even more explicit with the specifications in the same article: “*this right includes the freedom of thought and religion, freedom to change religion or belief and freedom to either alone or in community with others and both in public and in private, to manifest and propagate the religion or belief in worship, teaching, practice and observance.*”
96. Seychelles has no state religion and it is not necessary to be of or to practice a particular religion to be a public officer (Constitution, Article 21(5)). In the same Article, there are provisions that no law shall establish or impose a religion. Thus, the country is multi-denominational and there is an inter-faith committee formed to ensure religious harmony.
97. Seychelles Inter-Faith Committee (SIFCO), formed in 2009 and launched officially in February 2012 has been active in promoting inter-denominational understanding through joint activities, in fostering stronger spirituality in the general population and in developing Position Papers on a variety of social issues.

98. Migrant workers are free to practice their religion. Migrants are free to attend services at places of worship, including at churches, halls, temples and mosques. These are freely accessible and there are no known restrictions for migrant workers and their families.

### **Right to privacy**

99. The Constitution in Article 20 guarantees the right to privacy and freedom from arbitrary search of person and property. Access to telephone land and fixed lines, mobile communication and Internet is unrestricted by the State. Monitoring of communications is virtually unknown or unreported. The government generally respected these prohibitions in practice.

100. Migrant workers and their families are free to obtain mobile phones, internet connections and television cable services with the only restrictions being the laws of Seychelles and affordability.

### **Right to property**

101. The right to property is provided for under Article 26 of the Constitution, which states that *“Every person has a right to property and for the purpose of this Article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others”*. This right is qualified by limitations provided within the Article.

102. A migrant worker, or any person who is not a citizen of Seychelles, may purchase immovable property which is privately owned, subject to sanction being obtained from the Government of Seychelles. A foreign citizen may not acquire freehold land on outlying islands of Seychelles, although, subject to approval they may hold the property on a long term lease.

## **Right to a fair and public hearing with all the guarantees of a due process**

103. Article 19 of the Constitution provides that *“Every person charged with an offence has the right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law”*.
104. Article 19(2)(b) of the Constitution stipulates that every person who is charged with an offence *“shall be informed at the time the person is charged or as soon as is reasonably practicable, in , as far as is practicable, a language that the person understands and in detail, of the nature of the offence”*.
105. Article 19(2)(d) further provides that every person has *“a right to be defended before the court in person, or, at the person’s own expense by a legal practitioner of the person’s own choice, or, where a law so provides, by a legal practitioner provided at public expense”*.
106. With regards to interpreters, Article 19(2)(f) states that every person *“shall, as far as is practicable, have without payment the assistance of an interpreter if the person cannot understand the language used at the trial of the charge”*.
107. During sessions conducted at the MLHRD, the Ministry goes to great lengths to ensure that effective translation tools are available for migrant workers. The Ministry has established contacts with Resident Embassies, as well as individuals outside of the formalized structure who assist with translation on an ad-hoc and voluntary basis. The process is fast-tracked for the migrant workers.

## **Right to have recourse to diplomatic or consular assistance and protection**

108. There are no legal or policy restrictions for migrant workers to have full access to diplomatic and consular assistance and protection.

### **Right to recognition everywhere as a person before the law**

109. Every person has the right to equal recognition as a person before the law. Article 27(1) of the Constitution provides that *“Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without distinction on any ground except as is necessary in a democratic society”*.
110. Equality is established in all laws which pertain to all persons without discrimination. The language of the Constitution regarding people refer to ‘persons’ and ‘individuals’, making no distinction of gender.

### **Right of equal treatment with nationals in respect to remuneration and other conditions of work such as overtime, holidays, etc**

111. Migrant workers have the right to equal treatment with nationals in respect to remuneration and other conditions of work. This is provided for in Article 67 of the Employment Act, which notes that *“Non-Seychellois workers, not exempt from the provisions of this Act, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers but may be given such additional benefits and privileges as the competent officer may authorize”*.
112. During the attestation of the contract of migrant workers the MLHRD also ensures that the provisions of the contracts are the same as that would be provided for a citizen of Seychelles. During workplace inspection it is verified that the terms and conditions are being respected by employers.

### **Right to join freely any trade union**

113. The Industrial Relations Act 1993 allows all workers – excluding police, military, prison, and firefighting personnel – to form and join independent unions and to bargain collectively. Strikes are illegal unless arbitration procedures are first exhausted. The Act requires that two-

thirds of union members need to vote for a strike in a meeting specifically called to discuss the strike, and provides the government with the right to call for a 60-day cooling off period before a strike starts. Anyone found guilty of calling for an illegal strike can be fined SR5,000 (US\$383) and up to six months' imprisonment.

114. The law also provides discretionary powers to the Registrar General to refuse the registration of unions. Antiunion discrimination is prohibited. The government has the right to review and approve all collective bargaining agreements in the public and private sectors. The law also imposes compulsory arbitration in all cases where negotiating parties do not reach an agreement through collective bargaining.

115. In addition to labour inspection routine, the Ministry of Labour and Human Resource Development has the position of welfare officer to look after the needs of migrant workers and their working conditions. A new employment policy was launched in 2014 which includes strategies on migrant workers and localization. Strategies in the policy are namely regular joint inspections between the Ministry of Labour and Human Resource Development and the Ministry of Health, including on outer islands, to ensure workers enjoy decent working and living conditions; ensure minimum wages are being respected for all workers in Seychelles; attestation of contracts of migrant workers and close monitoring of organizations' localization plan.

### **Right to emergency medical care**

116. Migrant workers have access to all State Emergency Medical Services on the same basis as citizens of Seychelles.

117. In the case of migrant workers employed by the Government of Seychelles, the Public Service Order of 2011 stipulates that the Government is “*responsible to meet the primary health care costs of expatriates in Government employment and that of their dependents*”.

## **Right to a safe and healthy work environment**

118. The Occupational Safety and Health Decree of 1978 is applicable to all employees (including migrant workers) and employers in Seychelles, including those working for the Government of Seychelles and those who are self employed.
119. The Decree imposes a duty on the employer to ensure that employees are not exposed to health and safety risks, and that every employee undergoes a medical examination prescribed for the relevant job category. The employer is therefore responsible to guarantee a safe working environment, which includes ensuring that workers wear their Personal Protective Equipments.
120. An onus is placed upon the person who may design, manufacture, import or supply an item or substance for use at the workplace to ensure that the same is safe and without risk to health, and to guarantee that necessary testing and examinations have been carried out.
121. Regulations to the Occupational Health Decree also provide detailed standards that must be maintained at various types of workplaces – for instance in the Construction Industry and for Dock Workers.

## **Right to a name, registration of birth and nationality**

122. Children born to migrant workers are registered in the Seychelles and have the right to nationality if one of the parents is a citizen. Article 8 of the Constitution states that '*Subject to Article 9, a person born in Seychelles on or after the coming into force of this Constitution, shall become a citizen of Seychelles at the date of birth*'. Article 9(1) states that '*A person shall not become a citizen of Seychelles by virtue of Article 8 if, at the date of birth, neither of the person's parents is a citizen of Seychelles.*' Seychelles law bases the acquisition of nationality in the principle of *jus sanguinis*.

## **Right of access to education**

123. Migrant workers are free to send their children to state or private schools. Crèche, primary and secondary are free for children of migrant workers. Post-secondary education is available on a chargeable basis. In comparison, crèche to the end of post-secondary education is free for citizens of Seychelles at State schools.

## **Right to preserve a cultural identity**

124. There have been no problems regarding ethnic, religious and linguistic minorities in the recent past in Seychelles. All groups are encouraged to maintain their cultural heritage and practices. Advertisements and obituaries, especially in the daily Nation are regularly published in a variety of languages: Kreol, English, French, Hindi, Urdu and Tamil. All religious groups observe their rites as per their will.

125. In Seychelles people are not classified according to ethnicity and race. The concept is seen as alien and the only classifications for census purposes are according to declared religion, professions, socio-economic status and nationality, as in Seychellois nationals, no matter what origin and non-nationals.

126. Characterization of the population by ethnicity is not even part of any kind of national survey. With the mixed ethnicity and race, it is perhaps difficult to begin counting people as per their 'race'; indeed, the concept in formal setting is alien to the Seychellois and would create a stir should the government begin to use such characterisations. Moreover, it is expected that many people would not know in which category to place themselves.

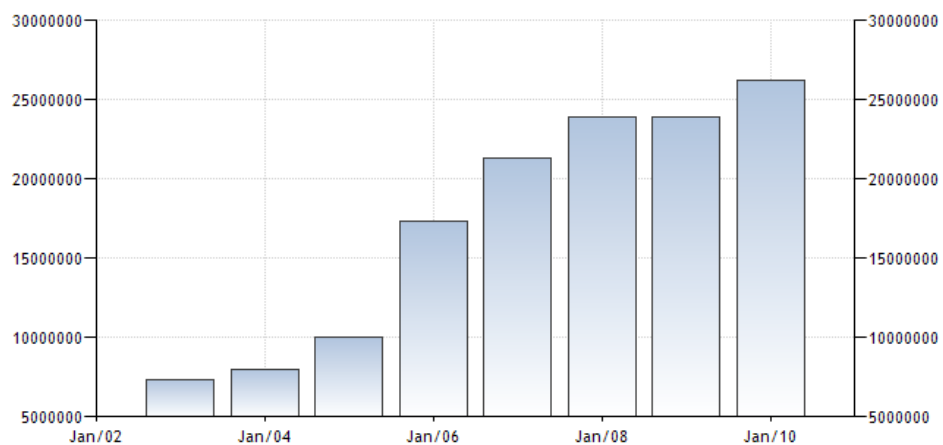
127. However, for surveys and data collection procedures with migrant workers, the concept of nationality is used. Specific nationalities are currently used, with some regional categorisations (such as Asians, Africans).



## Right to transfer earnings and savings upon the termination of their stay in the State of employment

128. The Workers' remittances and compensation of employees; paid (US dollar) in Seychelles was last reported at US\$26, 199, 008.94 in 2010, according to a World Bank report published in 2012. Workers' remittances and compensation of employees comprise current transfers by migrant workers and wages and salaries earned by nonresident workers. Migrants' transfers are defined as the net worth of migrants who are expected to remain in the host country for more than one year that is transferred from one country to another at the time of migration. Compensation of employees is the income of migrants who have lived in the host country for less than a year.

**Figure 2: Migrant workers' remittances from January 2002 to January 2010<sup>10</sup>**



<sup>10</sup><http://www.tradingeconomics.com/seychelles/workers-remittances-and-compensation-of-employees-paid-us-dollar-wb-data.html>

## **Right to be fully informed**

129. The MLHRD promotes the education of workers of their rights, including those of migrants. Information notices in Indian and Chinese languages are printed and distributed by labour inspectors, with information on basic rights. There are also leaflets on the same with focus on employment laws and resources in case of problematic situations. Arrangements have been made with the Indian and Chinese embassies to have interpreters and translators whenever needed to facilitate understanding of communications between the migrant workers and various institutions and persons, as may be necessary. It is to be noted that the majority of migrant workers from the African Region are conversant with at least one of the national languages of Seychelles.

130. Workers can also contact the MLHRD in person or through other forms of communication to request further information about their rights and how best to implement them.

## **Right to be temporarily absent without effect upon their authorization to stay or to work, as the case may be**

131. There are no restrictions to migrant workers being temporarily absent for reasons of sickness, compassion and annual leave.

132. Migrant workers in the health, education, other public sectors, as well as those in the private sector, are often entitled to paid passage to countries of origins for paid vacations.

133. Migrant workers in the Public Service can take earned leave during the period of their contract, and the duration of the leave will not be added onto their contract. They may also receive payment in lieu of outstanding earned leave at the end of their contract period.

**Right to liberty of movement in the territory of the State of employment and freedom to choose their residence there**

134. Article 25 of the Constitution states in clause 1 that *‘Every person lawfully present in Seychelles has a right of freedom of movement and for the purpose of this Article this right includes the right to move freely within Seychelles, the right to reside in any part of Seychelles, the right to leave Seychelles and the right not to be expelled from Seychelles.’* Moreover, clause 2 also states that every person who is a citizen of Seychelles has a right to enter Seychelles and, subject to clause (3) (d), not to be expelled from Seychelles.

135. However, Article 25(3) places some restrictions such as those prescribed by *‘a law necessary in a democratic society in the interests of defence, public safety, public order, public morality or public health; for protecting the rights and freedoms of other persons; for the prevention of a crime or compliance with an order of a court.’* Thus, there are no restrictions to freedom of movement within the country except those constraints linked to national security, public health and maintenance of law and order in the country.

136. Transportation to the outer islands of Seychelles is available on a chargeable basis for both nationals and non-nationals. To note that there are some protected and or private owned islands that have restricted access for all persons.

**Right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests**

137. There are no restrictions and migrant workers are to free form their own associations and to register them at the Registrar General’s Office. They are also free to join national existing associations.

138. The Constitution of Seychelles in Article 23 states that *‘Every person has a right to freedom of peaceful assembly and association and for the purpose of this Article this right includes the right to assemble freely and associate with other persons and in particular to*

*form or to belong to political parties, trade unions or other associations for the protection of the interests of that person and not to be compelled to belong to any association.’* The restrictions imposed for this right are considered those needed in a democratic society and are linked to national security, public health and morals and maintenance of law and order in the country.

### **Right to vote and to be elected in the State of origin, in accordance with its legislation**

139. There are no restrictions for these rights and migrant workers may vote and be elected in their States of Origin whilst employed in Seychelles. The status of application of this provision is fully determined by the legislation of the State of Origin.

### **Migrant workers employed in the Public Service Sector of the Government of Seychelles**

140. The Public Service is the principal executive arm of the Government, and is organized into two main entities: the Civil Service and the State Enterprise. It is guided by the Public Service Order (Third Edition) of 2011. The Government’s vision for the Public Service is that it must be made up of men and women who possess a high degree of professionalism, integrity and ability to assist the country’s leadership, to set standards in the management of human and material resources in order to achieve good governance. It is recognized by the Government that Seychellois citizens may not always be available to fill such positions, and therefore recruitment of non-Seychellois migrant workers can be considered.

141. The main categories of migrant workers under the employ of the Government are:

- Locally recruited expatriates
- Expatriates recruited overseas under contracts
- Expatriates recruited under technical cooperation agreements
- Consultants for specific projects on a short term basis

142. Migrant workers working for the Government are allowed three consecutive contracts of two year durations each. Extension beyond this duration will only be considered in exceptional circumstances and dependent upon valid justifications.
143. A migrant worker whose travel to and from their State of Origin is paid for by the Government of Seychelles as per the terms and conditions of their contract, shall be entitled to an excess baggage allowance of 25kg by air, with the same allowance provided for the migrant worker's spouse. No additional allowance is provided for the migrant worker's children.
144. In the case of migrant worker who qualifies for Government accommodation and does not receive the same – and will therefore have to rent private accommodation - , the migrant worker is eligible to receive a housing allowance. The housing allowance has an upwards limit of SR 4,500, but can be increased in exceptional circumstances.
145. Upon arrival into the country, a migrant worker who is entitled to accommodation shall be accommodated in a hotel or guesthouse approved by the Government on full board terms until the allocation of appropriate housing. The migrant worker contributes monetarily towards a small portion of the hotel expenses (RS100 at the lower end for the migrant worker alone, and RS250 at the highest for the migrant worker, their spouse, and more than two children).
146. A migrant worker in the Public Service is paid extra remuneration in addition to the basic salary of a Public Service employee.
147. The Government of Seychelles has entered into bilateral agreements with countries – such as India, Sri-Lanka, Mauritius, Cuba and China – for the recruitment of migrant workers in fields such as health, sports, culture, agriculture and education.

### **Procedures or institutions representing migrant workers and their families**

148. A faith-based NGO, the Office for Migrants and Itinerants, have representatives of migrant workers and members of their families in them. In public institutions, migrant workers may be members of committees and boards in their capacity as experts. However, there are no specific requirements for them to be represented; their membership is done on an ad-hoc basis.

### **Right to equality of treatment with nationals of the State of employment**

149. Refer to Article 25. Migrant workers are treated on the same basis as nationals of Seychelles with regards to laws and regulations related to employment.

### **Protection of the unity of the family**

150. Whether a migrant worker travels with his family depends on his or her contract of employment. Once in Seychelles migrant families receive the same protection as local families.

151. The Constitution also refers the family institution specifically in Article 32, where it is stipulated that “*The State recognizes that the family is the natural and fundamental element of society and the right of everyone to form a family and undertakes to promote the legal, economic and social protection of the family*”.

152. Migrant workers and their families can access all services provided to nationals by the social services division to support and protect families. These services are offered free of charge.

## **LIST OF ABBREVIATIONS AND ACRONYMS**

<b>AG</b>	Attorney-General
<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>GDP</b>	Gross Domestic Product
<b>HIV</b>	Human Immunodeficiency Virus
<b>ILO</b>	International Labour Organisation
<b>MDG</b>	Millennium Development Goals
<b>MLHRD</b>	Ministry of Labour and Human Resource Development
<b>NGO</b>	Non-Governmental Organisation
<b>PLHIV</b>	Persons Living with HIV
<b>SADC</b>	Southern African Development Community
<b>SIFCO</b>	Seychelles Inter-Faith Committee
<b>SFWU</b>	Seychelles Federation of Workers Union
<b>SR</b>	Seychelles Rupees

**Annex 1: Statistics from the Ministry of Labour and Human Resource Development  
Policy Planning & Research Section**

**Table 1: Occupational accidents reported by sector, industry and gender from January to December 2013**

<b>Industries &amp; Sectors</b>	<b>Female</b>	<b>Male</b>	<b>Total</b>
<b>Parastatal</b>			
Transport and Communication	1	11	12
Business Service	0	0	0
Public Service	0	0	0
Manufacturing	0	0	0
Trade & Commerce	0	0	0
<b>Total</b>	<b>1</b>	<b>11</b>	<b>12</b>
<b>Private</b>			
Agriculture, Fishing and Forestry	0	0	0
Transport and Communication	4	34	38
Hotel and Restaurant	3	4	7
Construction & Quarrying	0	8	8
Manufacturing	7	10	17
Business Service	1	1	2
<b>Total</b>	<b>15</b>	<b>57</b>	<b>72</b>
<b>Public</b>			
Public Service	6	9	15
<b>Total</b>	<b>6</b>	<b>9</b>	<b>15</b>
<b>Grand Total</b>	<b>22</b>	<b>77</b>	<b>99</b>

*Source: Labour Monitoring and Compliance Section; MLHRD*

**Table 2: Occupational accidents reported by sector, industry and gender from January to December 2014**

<b>Industries &amp; Sectors</b>	<b>Female</b>	<b>Male</b>	<b>Total</b>
<b>Parastatal</b>			
Transport and Communication	3	7	10
Business Service	0	0	0
Public Service	0	2	2
Manufacturing	0	0	0
Trade & Commerce	0	0	0
<b>Total</b>	<b>3</b>	<b>9</b>	<b>12</b>



<b>Private</b>			
Agriculture, Fishing and Forestry	0	5	<b>5</b>
Transport and Communication	0	16	<b>16</b>
Hotel and Restaurant	6	5	<b>11</b>
Construction & Quarrying	0	13	<b>13</b>
Manufacturing	2	10	<b>12</b>
Business Service	1	10	<b>11</b>
<b>Total</b>	<b>9</b>	<b>59</b>	<b>68</b>
<b>Public</b>			
Public Service	3	6	<b>9</b>
<b>Total</b>	<b>3</b>	<b>6</b>	<b>9</b>
<b>Grand Total</b>	<b>15</b>	<b>74</b>	<b>89</b>

*Source: Labour Monitoring and Compliance Section; MLHRD*

**Table 3: Mediation cases dealt with by status from January to August 2013**

<b>STATUS</b>	<b>TOTAL</b>
Settled	143
No settlement reached and certificate issued	313
Dismissed	6
Withdrawn	26
<b>TOTAL</b>	<b>488</b>

**Table 4: Registered grievance cases by industry and gender from January to August 2013**

INDUSTRY	Grievance cases based on reasons other than termination and redundancy		Grievance cases based on termination on grounds of misconduct		TOTAL		
	M	F	M	F	M	F	TOTAL
Agriculture, Fishing & Forestry	5	1	-	1	5	2	7
Manufacturing	4	-	3	-	7	0	7
Mining & Quarrying	3	-	3	1	6	1	7
Construction	117	3	8	-	125	3	128
Electricity & Water	2	-	9	-	11	0	11
Trade, Commerce & Repairs	6	4	19	18	25	22	47
Hotels & Restaurants	23	17	23	42	46	59	105
Transport & Storage	6	2	5	5	11	7	18
Administrative & Support Service Activities	3	3	14	3	17	6	23
Information & Communication	2	5	-	-	2	5	7
Health & Social Work	-	-	-	2	0	2	2
Education	-	1	-	2	0	3	3
Public Administration & Defense	1	-	-	-	1	0	1
Financial Intermediation	-	-	2	4	2	4	6
Real Estate, Renting & Business	10	3	7	8	17	11	28
Others Services	14	16	12	10	26	26	52
<b>Total</b>	<b>196</b>	<b>55</b>	<b>105</b>	<b>96</b>	<b>301</b>	<b>151</b>	<b>452</b>
<b>Grand Total</b>	<b>251</b>		<b>201</b>		<b>452</b>		

**Table 5: Mediation cases dealt with by complaint type and offenders from January to August 2013**

<b>Complaint Type</b>	<b>Adult</b>	<b><u>Youth</u><sup>11</sup></b>	<b>Company</b>	<b>Total</b>
Adjustment of salary as per minimum wage	8	5	-	<b>13</b>
Annual leave	7	-	-	<b>7</b>
Unpaid salary	107	16	1	<b>124</b>
Allowances /Bonus	1	1	-	<b>2</b>
Days off	2	-	-	<b>2</b>
Public Holidays	-	1	-	<b>1</b>
Unauthorized deduction	6	-	-	<b>6</b>
Overtime	2	-	-	<b>2</b>
Maternity leave	-	-	-	<b>0</b>
Warning	15	1	-	<b>16</b>
Notice	1	-	28	<b>29</b>
Compensation for length of service	5	-	-	<b>5</b>
Unjustified termination by employer	143	55	-	<b>198</b>
Service charge	-	-	-	<b>0</b>
Variation of contract	2	-	-	<b>2</b>
Moral damages	1	-	-	<b>1</b>
<b>Total</b>	<b>300</b>	<b>79</b>	<b>29</b>	<b>408</b>

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<sup>11</sup>Youths aged 15-24 years

**Table 6: Prosecuted cases by type of complaint, court and offenders from January to August 2013**

Complaint Type by court		Adult	Youth <sup>12</sup>	Company	Total	G. Total
Failing to submit documents at competent officer's request	Magistrate court	0	0	0	0	24
	Employment Tribunal	0	0	24	24	
Failing to comply with the negotiation Procedure	Magistrate court	0	0	0	0	30
	Employment Tribunal	0	0	30	30	
Failing to comply with the direction of the competent officer	Magistrate court	2	0	73	75	102
	Employment Tribunal	0	0	27	27	
Failing to comply with the decision of the Minister	Magistrate court	2	0	51	53	71
	Employment Tribunal	0	0	18	18	
Failing to issue certificate of employment	Magistrate court	0	0	0	0	2
	Employment Tribunal	0	0	2	2	
<b>Total</b>	<b>Magistrate court</b>	<b>4</b>	<b>0</b>	<b>124</b>	<b>128</b>	<b>229</b>
	<b>Employment Tribunal</b>	<b>0</b>	<b>0</b>	<b>101</b>	<b>101</b>	

**Table 7: Employment Tribunal cases from January to August 2013**

STATUS	January	February	March	April	May	June	July	August	Total
Registered	13	16	14	17	20	31	30		141
Completed	15	11	15	20	20	18	18		117
Adjourned for continuation	11	7	2	2	6	9	9		N/A
Adjourned for Judgment	4	8	2	14	8	10	3		N/A
Adjourned for mention	85	160	182	166	156	176	171		N/A
Monitored	45	39	39	45	40	35	37		N/A
Enforcement	11	11	15	13	20	18	11		N/A
Warrants issued	8	5	4	8	8	5	15		N/A
Summons issued	5	0	2	2	8	5	4		N/A

<sup>12</sup>Youths aged 15-24 years

## **Annex 2: Laws of Seychelles referred to in the Report**

### **THE CONSTITUTION OF SEYCHELLES**

#### **Article 15**

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

#### **Article 16**

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

#### **Article 17**

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

#### **Article 18**

1. Every person has a right to liberty and security of the person.
2. The restriction, in accordance with fair procedures established by law, of the right under clause (1) in the following cases shall not be treated as an infringement of clause (1)-
  - (a) the arrest or detention in execution of a sentence or other lawful order of a court;
  - (b) the arrest or detention on reasonable suspicion of having committed or of being about to commit an offence for the purposes of investigation or preventing the commission of the offence and of producing, if necessary, the offender before a competent court;
  - (c) the arrest or detention to prevent the spread of infectious or contagious diseases which constitute a serious threat to public health;
  - (d) the arrest or detention for the treatment and rehabilitation of a person who is, or reasonably suspected to be, of unsound mind or addicted to drugs to prevent harm to that person or to the community;

(e) the arrest or detention for the purpose of preventing the unauthorized entry into Seychelles of a person, not being a citizen of Seychelles, or for the purpose of deportation or extradition of that person;

(f) the detention for the rehabilitation and welfare of a minor with the consent of the parent or guardian or of the Attorney-General where such detention is ordered by a competent court.

3. A person who is arrested or detained has a right to be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter in, as far as is practicable, a language that the person understands of the reason for the arrest or detention, a right to remain silent, a right to be defended by a legal practitioner of the person's choice and, in the case of a minor, a right to communicate with the parent or guardian.
4. A person who is arrested or detained shall be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter of the rights under clause (3).
5. A person who is arrested or detained, if not released, shall be produced before a court within twenty-four hours of the arrest or detention or, having regard to the distance from the place of arrest or detention to the nearest court or the non-availability of a judge or magistrate, or force majeure, as soon as is reasonably practicable after the arrest or detention.
6. A person charged with an offence has a right to be tried within a reasonable time.
7. A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise-

(a) where the court is a magistrates' court, the offence is one of treason or murder;

(b) the seriousness of the offence;

(c) there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;

(d) there is a necessity to keep the suspect in custody for the suspect's protection or where the suspect is a minor, for the minor's own welfare;

(e) the suspect is serving a custodial sentence;

(f) the suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence.

8. A person who is detained has the right to take proceedings before the Supreme Court in order that the Court may decide on the lawfulness of the detention and order the release of the person if the detention is not lawful.
9. Proceedings under clause (8) shall be dealt with as a matter of urgency by the Supreme Court and shall take priority over the proceedings of the Court listed for hearing on that day.
10. A person who has been unlawfully arrested or detained has a right to receive compensation from the person who unlawfully arrested or detained that person or from any other person or

authority, including the State, on whose behalf or in the course of whose employment the unlawful arrest or detention was made or from both of them.

11. A person who has not been convicted of an offence, if kept or confined in a prison or place of detention, shall not be treated as a convicted person and shall be kept away from any convicted person.
12. An offender or a suspect who is a minor and who is kept in lawful custody or detention shall be kept separately from any default offender or suspect.
13. A female offender or suspect who is kept in lawful custody or detention shall be kept separately from any male offender or suspect.
14. Where a person is convicted of any offence, any period which the person has spent in custody in respect of the offence shall be taken into account by the court in imposing any sentence of imprisonment for the offence.
15. A person shall not be imprisoned merely on the ground of the inability to fulfill a contractual obligation.
16. Clause (15) shall not limit the powers of a court under any law in enforcing its orders.

## **Article 19**

1. Every person charged with an offence has the right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.
2. Every person who is charged with an offence-
  - (a) is innocent until the person is proved or has pleaded guilty;
  - (b) shall be informed at the time the person is charged or as soon as is reasonably practicable, in, as far as is practicable, a language that the person understands and in detail, of the nature of the offence;
  - (c) shall be given adequate time and facilities to prepare a defence to the charge;
  - (d) has a right to be defended before the court in person, or, at the person's own expense by a legal practitioner of the person's own choice, or, where a law so provides, by a legal practitioner provided at public expense;
  - (e) has a right to examine, in person or by a legal practitioner, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on the person's behalf before the court on the same conditions as those applying to witnesses called by the prosecution;
  - (f) shall, as far as is practicable, have without payment the assistance of an interpreter if the person cannot understand the language used at the trial of the charge;
  - (g) shall not be compelled to testify at the trial or confess guilt;
  - (h) shall not have any adverse inference drawn from the exercise of the right to silence either during the course of the investigation or at the trial; and
  - (i) shall, except with the person's own consent, not be tried in the person's absence unless the person's conduct renders the continuance of the proceedings in the person's conduct renders

the continuance of the proceedings in the person's presence impracticable and the court has ordered the person to be removed and the trial to proceed in the person's absence.

3. When a person is tried for any offence that person or any other person authorised by that person in that behalf shall, if either of them so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given as soon as is practicable after judgment a copy for the use of that person of any record of the proceedings made by or on behalf of the court.
4. Except for the offence of genocide or an offence against humanity, a person shall not be held to be guilty of an offence on account of any act or omission that did not, at the time it took place, constitute an offence, and a penalty shall not be imposed for any offence that is more severe in degree or description for any offence that is more severe in degree or description than the maximum penalty that might have been imposed for the offence at the time when it was committed.
5. A person who shows that the person has been tried by a competent court for an offence and either convicted or acquitted shall not be tried again for that offence or for any other offence of which the person could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
6. A person shall not be tried for an offence if the person shows that the person has been pardoned for that offence in accordance with an Act made pursuant to article 60(2).
7. Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.
8. Subject to clause (9), all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.
9. Anything in clause (8) shall not prevent the court or other authority from excluding from the proceedings, except for the announcement of the decision of the court or other authority, persons other than the parties thereto, their legal representatives and legal practitioners to such extent as the court or other authority-

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

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



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

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

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

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

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

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

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

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

## **Article 20**

1. Every person has a right not to be subjected—

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

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

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

premises and that belongs to the Government or that authority or body corporate, as the case may be; or

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

## **Article 21**

1. Every person has a right to freedom of conscience and for the purpose of this article this right includes freedom of thought and religion, freedom to change religion or belief and freedom either alone or in community with others and both in public and in private, to manifest and propagate the religion or belief in worship, teaching, practice and observance.
2. The freedom to manifest and propagate a religion or belief may be subject to such limitations as may be prescribed by a law and necessary in a democratic society
  - a) in the interests of defence, public safety, public order, public morality or public health; or
  - b) for the purpose of protecting the rights or freedoms of other persons.
3. A person attending any place of education shall not be compelled to impart or receive religious instruction or to take part in or attend any religious ceremony or observance.
4. Subject to this Constitution or any other law, a person shall not be compelled to take any oath that is contrary to the religion or belief of that person or to take any oath in a manner that is contrary to that religion or belief.
5. A person shall not be required to profess any religion as a qualification for public office.
6. A law shall not make provision for the establishment of any religion or the imposition of any religious observance.

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

## **Article 23**

1. Every person has a right to freedom of peaceful assembly and association and for the purpose of this article this right includes the right to assemble freely and associate with other persons and in particular to form or to belong to political parties, trade unions or other associations for the protection of the interests of that person and not to be compelled to belong to any association
2. The right under clause (1) may be subject to such restrictions as may be prescribed by a law and necessary in a democratic society—
  - a) in the interests of defence, public safety, public order, public morality or public health;

- b) in respect of the registration of associations or political parties;
- c) for the protection of the right and freedoms of other persons,
- d) for imposition of restrictions–
  - I. on persons who are not citizens of Seychelles; or
  - II. on public officers or members of the disciplinary forces

## **Article 26**

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

the interest or right, the legality of the acquisition or taking of possession of the property, the amount of compensation payable to the person and for the purpose of obtaining prompt payment of compensation.

4. Where the property acquired by the State under this article is not used, within a reasonable time, for the purpose for which it was acquired, the State shall give, to the person who owned it immediately before the acquisition of the property, an option to buy the property.
5. A law imposing any restriction on the acquisition or disposal of property by a person who is not a citizen of Seychelles shall not be held to be inconsistent with clause (1).

### **Article 27**

1. Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.
2. Clause (1) shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups.

### **Article 119**

1. The judicial power of Seychelles shall be vested in the Judiciary which shall consist of –
  - a) the Court of Appeal of Seychelles;
  - b) the Supreme Court of Seychelles; and
  - c) such other subordinate courts or tribunals established pursuant to article 137.
2. The Judiciary shall be independent and be subject only to this Constitution and the other laws of Seychelles.
3. Subject to this Constitution, Justices of Appeal, Judges and Masters of the Supreme Court shall not be liable to any proceedings or suit for anything done or omitted to be done by them in the performance of their functions
4. An Act establishing a subordinate court or tribunal referred to in clause (1)(c) may grant to the person exercising judicial functions in the court or tribunal immunity from proceedings or suit to the extent provided in clause (3).

### **Article 143**

1. There shall be an Ombudsman who shall be appointed by the President from candidates proposed by the constitutional Appointments Authority
2. A person is qualified for appointment as Ombudsman if
  - (a) the person is a citizen of Seychelles;
  - (b) the person is of proven integrity and impartiality;

(c)the Constitutional Appointments Authority is of the opinion that the person possesses demonstrated competence and experience and can effectively discharge the functions of the office of Ombudsman; and

(d)the person is not a member of the National 3/14/1996 Assembly or Judiciary or a Minister or the Vice President or a candidate in an election under this Constitution or has been designated as a candidate's Vice-President at an election for President

3. Subject to this Constitution, the Ombudsman shall not, in the performance of the office of Ombudsman, be subject to the direction or control of any person or authority
4. The person holding office as Ombudsman shall not hold office of any other public office of emolument or engage in any occupation for reward outside the functions of the office of Ombudsman which might compromise the integrity, impartiality and independence of that office.
5. Schedule 5 shall have effect with regard to the Ombudsman.
6. An Act may provide for any matter, not otherwise provided for under this article, necessary or expedient for the purpose of ensuring the independence, impartiality and effectiveness of the office of Ombudsman.

#### **Article 144**

1. A person shall be appointed to the office of Ombudsman for a term of seven years, and is eligible for reappointment at the end of the term.
2. A person holding the office of Ombudsman shall vacate the office on death, if the person, by writing addressed to the President, resigns or if the person is removed from office or at the end of a term of office.
3. Where a person holding office as Ombudsman resigns, the resignation has effect on the date it is received by the President.
4. The salary, allowances and gratuity payable to the Ombudsman shall be prescribed by or under an Act and the salary, allowances or gratuity so payable shall be a charge on the Consolidated Fund.

Subject to article 165, the salary, allowances or gratuity payable to and the term of office and other conditions of service of the Ombudsman shall not be altered to the disadvantage of the Ombudsman after appointment.

#### **Article 145 (2)**

Subject to this Constitution, the Public Service Appeal Board shall not, in the performance of its functions, be subject to the direction or control of any person or authority

## **Article 146 (1)**

The Public Service Appeal Board shall hear complaints by persons aggrieved by-

- a) an appointment made to an office;
- b) a promotion to an office;
- c) disciplinary proceedings taken in respect of an officer;
- d) the termination of appointment of a person who was holding an office;
- e) any decision relating to the qualification of a person who has applied for an office or is serving in an office, in the public service

## **SCHEDULE 5 OMBUDSMAN (Article 143)**

### **Functions of Ombudsman**

1. (1) Subject to this Schedule, the Ombudsman may -

(a) investigate an action taken by a public authority or the President, Vice-President, Minister, officer or member of the public authority, being action taken in the exercise of the administrative functions of the public authority in the circumstances specified in subparagraph (2);

(b) investigate an allegation of fraud or corruption in connection with the exercise by a person of a function of a public authority.

(c) assist an individual complainant in respect of legal proceedings in relation to a contravention of the provisions of the Charter;

(d) with leave of the Court hearing proceedings relating to a contravention of the provisions of the Charter, become a party to the proceedings;

(e) initiate proceedings relating to the constitutionality of a law or of the provisions of a law.

(2) The Ombudsman shall investigate an action under subparagraph (1)(a) -

(a) where the Ombudsman receives a complaint from a person or body alleging that the complainant has suffered a violation of the complainant's fundamental rights or freedoms under the Charter, or an injustice, in consequence of a fault in the administration of a public authority or has been treated harshly or oppressively

by the authority or the President, Vice-President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority;

(b) where the President, Vice-President or a Minister or member of the National Assembly requests the Ombudsman to investigate the action on the ground that the person or body specified in the request -

(i) has or may have suffered a violation of the person's or body's fundamental rights or freedoms under the Charter, or an injustice, in consequence of a fault in the administration of a public authority or of a fault of the President or Vice-President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority;

(ii) has been treated harshly or oppressively by the authority or the President or Vice-President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority,

or on the ground that the practices or patterns of conduct of a public authority or the President or Vice-President or a Minister, officer or member of the authority in the exercise of the administrative functions of the authority appear to result in injustices or harsh, oppressive or unfair administration; or

(c) where the Ombudsman considers that it is necessary to investigate the action on the grounds specified in subparagraph (b),

and an allegation under subparagraph (1)(b).

(3) The Ombudsman shall not investigate or may discontinue an investigation of a complaint relating to an action referred to in subparagraph (1)(a) or an allegation under subparagraph (1)(b) where it appears to the Ombudsman that -

(a) the complaint or allegation is frivolous, vexatious or trivial or not made in good faith;

(b) the making of the complaint or allegation has, without reasonable cause, been delayed for more than twelve months;

(c) in the case of a complaint relating to subparagraph (1)(a), the complainant does not have sufficient interest in the subject matter of the complaint;

(d) in the case of a complaint relating to subparagraph (1)(a), the complaint has or had, by way of remedy under this Constitution or any other law, a right of appeal, objection or review on merits and the complainant has not exhausted the remedy, unless the Ombudsman believes that in the particular circumstances it is or was not reasonable to expect the complainant to exhaust or to have exhausted the remedy.

(4) In this Schedule -

“action” includes a failure to act, an advice or a recommendation;

“body” means a body of persons whether corporate or incorporate;

“investigation” means an investigation in terms of this Schedule;

“public authority” means a Ministry, a department division or agency of the Government or a statutory corporation or a limited liability company which is directly or ultimately under the control of Government or any other body which is carrying out a government function or service or a person or body specified by an Act.

(5) A limited liability company of which the Government holds not more than forty-nine per centum of its issued share capital shall not, for the purposes of subparagraph (4), be treated to be a limited liability company which is under the direct or ultimate control of the Government.

### **Excluded matters**

2. The Ombudsman shall not investigate an action referred to in paragraph 1(1)(a) -

(a) in respect of a subject matter which the President or Vice-President or the relevant Minister certifies may affect the relation or dealing between the Government of Seychelles and any other Government or international organization, the security of the Republic or the investigation of crime;

(b) concerning the performance of a judicial function or a Justice of Appeal, Judge or person performing a judicial function;

(c) taken with respect to orders or directions to a disciplinary force or a member of the force; or

(d) unless the person aggrieved is resident in Seychelles or the action was taken in respect of the person aggrieved while the person was present in Seychelles or in respect of rights or obligations that arose or accrued in Seychelles.



## **Investigative power of Ombudsman**

3. Subject to this Schedule, the Ombudsman has the same power as a Judge of the Supreme Court in respect of the attendance of a person before the Ombudsman, the examination of any person in relation to an investigation, the production of a document or record relevant to an investigation and the inspection of premises relevant to an investigation.

## **Privileged information**

4. (1) Subject to this paragraph, a person shall not refuse to answer any question or withhold any document, information, record or thing or refuse to make available to the Ombudsman any document, information, record or thing or refuse access to the Ombudsman to any premises relating to an investigation on the ground that the answering of the question or disclosure of the document, information, record or thing or making available of any document, information, record or thing or the granting of access to any premises would be injurious to the public interest, contrary to a law or in breach of a privilege or an obligation, whether contractual or otherwise.

(2) Where a certificate certifying that the answering of a question, the disclosure of document, information, record or information or thing or the granting of access to any premises would be contrary to public interest is issued by -

(a) the President -

(i) because it might prejudice the security of the Republic or international relations between the Government of Seychelles and any other Government or international organisation; or

(ii) because it involves the disclosure of the proceedings of the Cabinet;

(b) the Attorney-General because it might prejudice the investigation or detection of crime,

the Ombudsman shall not require a person to answer the question, disclose the document, information, record or thing, make available the document, information, record or thing or grant access to premises, as the case may be.

## **Investigation**

5. (1) The Ombudsman shall, when carrying out an investigation, act fairly and judicially and shall in particular, afford any public authority or person alleged to have taken or authorised an action or responsible for the administration of the public authority which is the subject of an investigation an opportunity to be heard.

(2) Subject to subparagraph (1), the Ombudsman shall determine the procedures to be followed when conducting an investigation.

## **Report**

6. (1) Subject to subparagraph (7), where after an investigation the Ombudsman is of the opinion that

(a) the action which was the subject of the investigation -

(i) was contrary to law;

(ii) was unreasonable, unjust, oppressive or discriminatory;

(iii) was based on a mistake of facts or a wrongful assessment of facts;

(iv) was based partly on a mistake of law and facts;

(v) was based on an improper exercise of a discretionary power or an exercise of a discretionary power based on irrelevant considerations;

(vi) was an improper refusal to exercise a discretionary power;

(vii) was based on an exercise or improper use of authority or power;

(viii) was in accordance with law but the law is unreasonable, unjust, oppressive or discriminatory;

(ix) was otherwise, in all circumstances, wrong;

(x) should be cancelled, varied or given further consideration; or

(b) reasons for the action which was the subject of the investigation should have been given;

(c) there was unreasonable delay before the decision or action which was the subject of the investigation was taken;

(d) there was an omission which needs to be rectified;

(e) the law or practice on which the action which is the subject of the investigation is based should be reconsidered;

(f) the practice or pattern of conduct of a public authority or the President, Vice-President a Minister, officer or member of the public authority which is the subject of the investigation is contrary to law or unreasonable, unjust, harsh, oppressive or discriminatory; or

(g) the allegation of fraud or corruption is well founded,

the Ombudsman shall report the opinion and reasons together with any recommendation or remedy the Ombudsman considers fit to make to the President, Vice-President, Minister, officer, member or chief executive officer of the public authority, as the case may be.

(2) The Ombudsman shall, where the report is not required to be sent to the President, Vice-President or Minister, send a copy of the report to the President and where relevant to the Vice-President and any relevant Minister.

(3) The Ombudsman may specify in the report referred to in subparagraph (1) a time limit within which it is reasonable for the report to be acted upon.

(4) Where a report submitted under subparagraph (1) is not, in the opinion of the Ombudsman, adequately acted upon -

(a) within the time specified in the report; or

(b) if no time has been specified, within such reasonable time as the Ombudsman is of the opinion is reasonable,

the Ombudsman may submit the report and recommendation together with such further observations the Ombudsman thinks fit to make to the President and the National Assembly.

(5) The Ombudsman shall attaché to every report submitted to the President, Vice-President and the National Assembly under subparagraph (4) a copy of any comments made thereon by or on behalf of the chief executive officer of the public authority concerned or the President, Vice-President, Minister, officer or member of the public authority, as the case may be.

(6) The Ombudsman shall not later than the thirty-first January in each year make a general report to the National Assembly with a copy to the President on the exercise of the functions of the Ombudsman under this Constitution during the previous year.

(7) The Ombudsman shall, in every case where a complaint is received by the Ombudsman, inform the complainant of the result of the complaint.

## **Miscellaneous provisions relating to Ombudsman**

7. (1) For the purposes of the law of defamation, absolute privilege is attached to the publication of any matter by the Ombudsman or any other person acting under the authority of the Ombudsman.

(2) The Ombudsman or any other person acting under the authority of the Ombudsman shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of the functions of the Ombudsman.

## **THE EMPLOYMENT ACT**

### **Article 32(2)**

Wages payable in cash are payable at regular intervals as agreed between employer and worker but not less than once a month and not later than the fifth day following the date on which they fall due.

### **Article 35**

1. An employer, other than an employer solely employing part- time casual or domestic workers, shall keep a record of the wages due to each of the workers in the employment of the employer, of the deductions made there from and of the amounts actually paid
2. The record shall be kept at the place of employment and shall be available for inspection by the competent officer

### **Article 67**

Non-Seychellois workers, not exempt from the provisions of this Act, shall enjoy the same terms and conditions of employment as are applicable to Seychellois workers but may be given such additional benefits and privileges as the competent officer may authorise.

## THE PENAL CODE

### **Article 138**

Any person who-

- a) procures or attempts to procure any girl or woman under the age of twenty-one years, not being a common prostitute or of known immoral character, to have unlawful carnal connection, either in Seychelles or elsewhere, with any other person or persons; or
- b) procures or attempts to procure any woman or girl to become, either in Seychelles or elsewhere, a common prostitute; or
- c) procures or attempts to procure any woman or girl to leave Seychelles, with intent that she may become an inmate of or frequent a brothel elsewhere; or
- d) procures or attempts to procure any woman or girl to leave her usual place of abode in Seychelles (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Seychelles or elsewhere is guilty of a misdemeanour:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

### **Article 155**

(1) A person who –

- a) keeps or manages, or acts or assists in the keeping or management of a brothel
- b) being the owner, tenant, lessee or occupier or person in charge of any premises, knowingly permits the premises or any part of the premises to be used as a brothel;
- c) being the owner, lessor or landlord or the agent of the owner, lessor or landlord, of any premises
  - I. lets out the premises or any part of the premises knowing that the premises or any part of the premises is to be used as a brothel; or
  - II. is wilfully a party to the continued use of the premises or any part of the premises as a brothel

is guilty of an offence and liable to imprisonment for three years

(2) In this section “brothel” means any premises or any part of any premises resorted to or used by any person for the purposes of prostitution or lewd sexual practices

### **Article 156**

A person who –

- a) procures, entices or leads away, for the purposes of prostitution, another person;
- b) knowingly lives wholly or in part on the earnings of prostitution of another person
- c) knowingly exploits the prostitution of another person;
- d) for the purposes of gain, exercises control, direction or influence over the movements or action of another person in a manner as to show that the person is aiding, abetting, encouraging or compelling the prostitution of that other person, is guilty of an offence and liable to imprisonment for five years.

### **Article 249**

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

### **Article 251**

Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour and is liable to imprisonment for three years