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**Seychelles**

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# 1 Introduction

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The Republic of Seychelles is an island nation off the east coast of Africa with a small population of just over 98 000 people, approximately 56% of whom live in an urban environment.<sup>1</sup> Traders from the Persian Gulf have known the islands for centuries; however, the first recorded landing on the then-uninhabited islands was made by the British East India Company in 1609. France annexed the islands in 1756. Following a war between France and the United Kingdom, the islands were surrendered and officially ceded to the British by the Treaty of Paris in 1814. Seychelles became an official Crown Colony in 1903, having been a dependency of Mauritius until that time. In 1975, Seychelles became self-governing, and a coalition government was formed with President James R Mancham as president and France-Albert René as the vice-president. Seychelles was granted independence in 1976. In 1977, France-Albert René came to power as president in a coup d'état led by the Seychelles People's United Party (renamed United Seychelles in 2018) and remained in power under the 1979 constitution which provided for a one-party state. Seychelles enacted a new constitution and held democratic elections in 1993,<sup>2</sup> part of a wave of democratisation that swept the continent in the early to mid-1990s.

In October 2020, Seychelles saw the first democratic handover of power from one ruling party to another since independence. The ruling United Seychelles party was defeated in the national election by the opposition party, Linyon Demokratik Seselwa,<sup>3</sup> and Wavel Ramkalawan was sworn in as president on 26 October 2020.<sup>4</sup>

Seychelles is currently ranked 43<sup>rd</sup> in the world human capital index. It is also the only country in the African region and the Indian Ocean to have attained the Very High Development Index category in 2019.<sup>5</sup>

The whole population has access to electricity,<sup>6</sup> and the country ranks third in Africa for internet penetration with over 70%, while over 64% of the population has a Facebook account.<sup>7</sup>

In the 2020 World Press Freedom Index rankings, Seychelles moved up six places to number 63 globally.<sup>8</sup> Reporters Sans Frontiers says that the media environment in Seychelles is slowly improving 'giving way to a broader range of opinion and more editorial freedom'.<sup>9</sup> This is true of the print and sound broadcasting media, but there is only one television service that is operated by the government.

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Seychelles. The chapter is divided into five sections:

- ▶ Media and the constitution
- ▶ Media-related legislation
- ▶ Media-related regulations

- ▶ Media self-regulation
- ▶ Media-related case law

This chapter aims to equip the reader with an understanding of the primary laws governing the media in Seychelles. Significant weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Seychelles, to enable the media to fulfil its role of providing the public with relevant news and information better, and to serve as a vehicle for government-citizen debate and discussion.

## **2 The media and the constitution**

In this section, you will learn:

- ▷ the definition of a constitution
- ▷ the definition of constitutional supremacy
- ▷ the definition of a limitations clause
- ▷ constitutional provisions that protect the media
- ▷ constitutional provisions that might require caution from the media or might conflict with media interests
- ▷ key institutions relevant to the media are established under the Seychelles Constitution
- ▷ enforcing rights under the constitution
- ▷ the three branches of government and separation of powers'
- ▷ weaknesses in the Seychelles Constitution that ought to be strengthened to protect the media

### **2.1 Definition of a constitution**

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a

soccer club or a professional association, such as a press council. Constitutions such as these set out the rules by which members of the organisation agree to operate. Constitutions can also govern much larger entities, indeed, entire nations.

The Seychelles Constitution sets out the foundational rules of the Seychelles state. These are the rules on which the entire country operates. The constitution contains the underlying principles, values and law of the Republic of Seychelles. Article 1(1) is a critical constitutional provision in this regard and states: 'Seychelles is a sovereign democratic Republic'.

## **2.2 Definition of constitutional supremacy**

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is essential to ensure that a constitution has legal supremacy. If a government passed a law that violated the constitution, was not per or conflicted with a constitutional provision, such law could be challenged in a court of law and could be overturned on the ground that it is unconstitutional. The Seychelles Constitution makes provision for constitutional supremacy. Article 1(5) states explicitly: 'This Constitution shall be the Supreme Law of Seychelles.'

## **2.3 Definition of a limitations clause**

Rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false, defamatory statements made with reckless disregard for the truth. Governments require the ability to limit rights to serve vital societal interests; however, owing to the supremacy of the constitution, this can be done only following the constitution.

The Seychelles Constitution makes provision for two types of legal limitations on the exercise and protection of rights and freedoms contained in Chapter III of the Seychelles Constitution, headed Seychelles Charter of Fundamental Human Rights and Freedoms.

### **2.3.1 Internal limitations**

Internal limitations clauses occur within an article of the constitution. They deal specifically and only with the limitation of the particular right or freedom that is dealt with in that article. As discussed more fully later in this chapter, both the right to privacy and the right to freedom of expression contain such internal limitations clauses. In other words, the article which includes the right also sets out the parameters or limitations allowable in respect of that right.

Article 47 of the Seychelles Constitution provides that, where a right or freedom contained in Chapter III of the constitution is subject to a limitation, that limitation may not have a broader effect than is strictly necessary. It may not be applied for any purpose other than that for which it was prescribed.

Often, internal limitations clauses offer insight into rights which appear to be substantive, but which are not very effective.

### **2.3.2 Constitutional limitations**

General limitations provisions apply to the provisions of a bill of rights or other statement setting out fundamental rights. These types of clauses allow a government to pass laws limiting rights, provided this is done according to the constitution.

The Seychelles Constitution does not have a general limitations provision applicable to limiting all rights, except by way of a state of emergency. The president may, in terms of article 41 of the constitution, declare a state of emergency if he or she believes there is a grave or imminent:

- ▶ threat to national security
- ▶ threat to public order
- ▶ civil emergency.

Should the president declare a state of emergency, article 43(2) permits the passing of laws limiting the rights and freedoms provided for in Chapter III. However, the limitations may only be imposed in as far as it is necessary to meet the exigencies of the situation. Article 43(3) provides that any state of emergency limitation may not be inconsistent with the fundamental rights to:

- ▶ life
- ▶ dignity
- ▶ freedom from slavery forced labour or bondage
- ▶ liberty, excepting the internal limitation in article 18(3) relating to legal arrest or detention
- ▶ a fair and public hearing
- ▶ freedom of conscience
- ▶ equal protection of the law.

## **2.4 Constitutional provisions that protect the media**

The Seychelles Constitution contains several essential articles in Chapter III. These articles directly protect the media, including publishers, broadcasters, journalists, editors and producers. There are additional articles in other chapters of the Seychelles Constitution which can be used by the media to ensure effective reporting on government activities.

### **2.4.1 Freedom of expression**

The most important provision that protects the media is article 22(1), which states that every person has a right to freedom of expression. The right to freedom of expression includes the right to hold opinions and to seek, receive and impart ideas and information without interference.

Freedom applies to every person which is essential as certain rights apply only to particular groups of people, such as citizens (in respect of voting rights, for example) or children (in respect of children's rights). Freedom of expression is, therefore, a fundamental right enjoyed by everyone in Seychelles, including foreigners.

The freedom is not limited to speech (oral or written) but extends to non-verbal or non-written expression. There are many examples of this, including physical expressions, such as mime or dance, photography or art.

The right to freedom of expression is subject to an internal limitation at article 22(2) that allows for the restriction of expression:

- ▶ in the interest of defence, public safety, public order, public morality or public health
- ▶ for protecting the reputation, rights, freedoms or private lives of persons
- ▶ for preventing the disclosure of information received in confidence
- ▶ for maintaining the authority and independence of the courts
- ▶ for maintaining the authority and independence of the National Assembly
- ▶ for maintain the technical administration, operation or general efficiency of wireless broadcasting, television or other means of communication or regulating public exhibitions or entertainment
- ▶ for the imposition of restrictions on public officers.

### **2.4.2 Right to privacy**

Article 20 of the Seychelles Constitution guarantees every person the right to privacy. In terms of article 20(1)(b), this includes the right not have any form of interception of communications, written, oral or in any other medium, without their consent, unless by order of the Supreme Court,

This right is important for journalists because it can be raised to protect communications with confidential sources of information.

It should be noted that this right may be subject to a limitation in terms of article 20(2) if it is determined that any communication is reasonably required in the interest of defence, public safety, order, morality or health, the protection of the rights and freedoms of others, the administration of the government, by order of

a court, the conservation and development of the economy and the well-being of the country.

### **2.4.3 Equal protection of the law**

Another important provision that protects the media is article 27, Right to Equal Protection of the Law. Article 27(1) provides that every person has a right to equal protection of the law, including the enjoyment of the rights and freedoms set out in the Seychelles Charter of Fundamental Human Rights and Freedoms without discrimination on any ground except as is necessary for a democratic society.

This provision is vital for journalists and the media because it protects them (as it does all people) from unfair or unequal treatment before the law and guarantees the rights of every person in Seychelles, including journalists.

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

Article 23(1) of the Seychelles Constitution provides that every person has the right to freedom of peaceful assembly and association, including the right to associate with others and form or belong to political parties, trade unions or other associations. It should be noted that no person can be compelled to belong to any association.

This right not only guarantees the rights of journalists to join trade unions, but also the rights of the press to form press associations and of entrepreneurs to form media houses and conduct media operations.

As previously discussed, not all rights are absolute; the right of association and assembly is subject to an internal limitation in article 23(2) that allows for restrictions:

- ▶ in the interest of defence, public safety, public order, public morality or public health
- ▶ in respect of the registration of associations or political parties
- ▶ for the protection of the rights and freedoms of others
- ▶ on persons who are not citizens of Seychelles
- ▶ on public officers or members of the disciplinary forces.

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

In terms of article 28(1) of the Seychelles Constitution, every person has the right to access information relating to him or herself that is being held by a public authority performing a government function and to have that information corrected in the case that it is inaccurate. The right to access to personal information is expanded in article 28(4) to include the public's right to access all information held by a public authority performing a government function.

This right is essential to journalists because it guarantees them, as well as the public at large, access to information held by public and government bodies.

As previously discussed, not all rights are absolute. The right to access to official information is subject to an internal limitation at article 28(2) that allows for restrictions:

- ▶ for protecting national security
- ▶ for the prevention and detection of crime and the enforcement of the law
- ▶ for compliance with an order of a court or per a legal privilege
- ▶ for the protection of the privacy, rights or freedoms of others.

#### **2.4.6 Privileges and immunities of the National Assembly**

Article 102(1) of the Seychelles Constitution provides members of the National Assembly freedom of speech in debates and immunity from prosecution in any court, or other proceedings, except proceedings in the National Assembly when exercising the freedoms or performing the functions of a member of the National Assembly. Article 102(2) specifically prohibits the arrest of any member of the National Assembly. If any proceedings are instituted against a member, those proceedings must not interfere with the member's ability to perform his or her functions.

This is important for the journalists as it allows members of the National Assembly to speak freely without fear of prosecution, allowing for the dissemination of information of national importance that journalists can report to the public.

#### **2.4.7 Independent state-owned broadcasting media**

Article 168(1) of the constitution provides that the state must ensure that all broadcasting media owned or controlled by the state or which receives contributions from public funds, must be constituted and managed so that they may operate independently of the state or any political party and without influence from any other body or person.

Further, article 168(2) requires all state-owned broadcast media to present divergent views.

This provision is important as it creates a constitutional requirement of independence of state-owned broadcasters, thereby making it clear that these are to operate as public broadcasters as opposed to state mouthpieces.



## **2.5 Constitutional provisions that might require caution from the media or might conflict with media interests**

### **2.5.1 Right to privacy**

Article 20 of the Seychelles Constitution guarantees every person the right to privacy. Article 20(1)(a) provides that this includes the right to refuse consent to the lawful entry of others onto that person's property.

It should be noted that this right may be subject to limitation. In terms of article 20(2), if it is determined that any communication is reasonably required in the interest of defence, public safety, public order, public morality, public health, the protection of the rights and freedoms of others, the administration of the government, by order of a court, the conservation and development of the economy and the well-being of the country.

The right to privacy is often raised in litigation involving the media. People who find themselves the object of media attention sometimes assert their privacy rights when arguing that they should not be photographed, written about or followed in public.

The media does have to be careful in this regard and should be aware that there are boundaries that need to be respected. It is impossible to state with certainty what these boundaries are, as they are context-specific and depend on the circumstances of each case. However, a public figure has less of a right to personal privacy concerning matters relevant to his or her public life. For example, a church minister will have less of a right to privacy concerning his/her private life if it is led in a manner that is inconsistent with the church teachings.

### **2.5.2 States of emergency**

Article 41 of the Seychelles Constitution empowers the president to declare a state of emergency where he or she believes there is a grave or imminent threat to national security or public order in Seychelles, or during a civil emergency. This is important as article 43 of the Seychelles Constitution provides that, during a state of emergency, certain rights may be limited, and this includes limitation of the rights to freedom of expression and association.

The ability to restrict the right of freedom of expression is worrying as it can be used to limit the media's ability to inform the public about matters of importance during a state of emergency. The restriction on the right of association is similarly worrying as the limitation can be used to disband media organisations or prevent them from performing their functions during a state of emergency.

### **2.5.3 Dignity**

The requirement of respect for human dignity set out in article 16 provides that every person has a right to be treated with dignity. Dignity is a right that is often raised in defamation cases because defamation usually undermines the dignity of

the person being defamed. This right is frequently set up against the right to freedom of the press, requiring a balancing of constitutional rights.

## **2.6 Important institutions relevant to the media established under the Seychelles Constitution**

Three important institutions concerning the media are established under the Constitution of Seychelles, the judiciary, the Constitutional Appointments Authority and the Ombudsman.

### **2.6.1 The judiciary**

In terms of article 119(1), the judiciary is the Seychelles courts, that is, the Court of Appeal, the Supreme Court and subordinate courts or tribunals established by acts of the National Assembly.

The judiciary is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and role as one of the branches of government. The media is essential for building public trust and respect for the judiciary, which is the foundation of the rule of law in society. The media needs the judiciary because of the ability of the court to protect the former from unlawful action by the state and unfair damages claims by litigants.

#### **The Court of Appeal**

Article 120 of the Seychelles Constitution provides for the Court of Appeal. It has jurisdiction to hear appeals from any judgment or order from the Supreme Court or any subordinate court established under an act. It should be noted that any matter relating to the application, contravention, enforcement or interpretation of the constitution takes precedence over any other matter before the Court of Appeal. If the Court of Appeal finds that a law, or any provision of a law, contravenes the constitution, the Justice of Appeal presiding over the court must send a copy of the finding to the president and the Speaker of the National Assembly.

In terms of article 121, the Court of Appeal is made up of a president of the Court of Appeal, two or more other justices and judges who are *ex-officio* members of the court. The president appoints the president of the Court of Appeal and the other Justices of Appeal from candidates proposed by the Constitutional Appointments Authority.

#### **The Supreme Court**

In terms of article 125(1) of the Seychelles Constitution, there shall be a Supreme Court with original jurisdiction and powers, conferred on it by the constitution, in matters relating:

- ▶ to the application, contravention, enforcement and interpretation of the constitution

- ▶ civil and criminal matters
- ▶ other jurisdiction conferred on it by an act of the National Assembly.

The Supreme Court also has supervisory jurisdiction over subordinate courts, tribunals and adjudicating authorities.

Article 129(3) provides that when the Supreme Court presides over a constitutional matter, it shall be referred to as the Constitutional Court. Matters relating to the interpretation, application, contravention and enforcement of the constitution must, in terms of article 125(2) take precedence over any other matter. In terms of article 129, jurisdiction relating to constitutional matters before the Supreme Court must be exercised by no fewer than two judges sitting together. The Constitutional Court has jurisdiction to hear all constitutional issues. Concerning alleged violations of the rights protected in Chapter III, the Constitutional Court's authority comes from article 46. Concerning other types of constitutional violations, the Constitutional Court's authority comes from article 129.

In terms of article 125(3) of the Seychelles Constitution, the Supreme Court consists of the Chief Justice, the puisne judges and the masters of the Supreme Court. They may exercise such limited jurisdiction and powers as conferred on them under an act of the National Assembly or following the rules of the Supreme Court in respect of interlocutory proceedings. In terms of article 125(6), it should be noted that an act of the National Assembly prescribes the number of puisne judges and masters of the Supreme Court who may be appointed.

Article 127 of the Seychelles Constitution empowers the president to appoint the judges and masters of the Supreme Court from candidates proposed by the Constitutional Appointments Authority.

## **2.6.2 The Constitutional Appointments Authority**

The Constitutional Appointments Authority (CAA) is essential for the media because it plays a pivotal role in the appointments of judges and the Ombudsman. In terms of article 141, the CAA is made up of three members, one appointed by the president and one appointed by the leader of the opposition. These two members appoint the third member who is to be the chairperson. All members are required to be citizens who have held either judicial or high government office. In terms of article 142, the term of office of a member of the CAA is seven years, renewable for further terms.

## **2.6.3 The Ombudsman**

In terms of article 143(1) of the Seychelles Constitution, the Ombudsman is appointed by the president from candidates proposed by the Constitutional Appointments Authority. In terms of article 143(3), the Ombudsman is not subject to the direction or control of any person or authority in the performance of his or her duties.

In terms of article 143(4), the person holding the office of the Ombudsman is

prohibited from holding any other public office or engaging in any occupation for reward outside the function of the office of Ombudsman which might compromise the integrity, impartiality and independence of the office.

Schedule 5 of the Seychelles Constitution relates to the Ombudsman. In terms of section 3 of this Schedule, the Ombudsman has the same power as a judge of the Supreme Court in performing his or her functions.

In terms of section 1(1) of schedule 5, the Ombudsman may:

- ▶ investigate any allegations of fraud or corruption against a public authority, the president, vice-president, a minister or any officer or member of a public authority
- ▶ become a party to any legal proceeding relating to the contravention of the rights provided for in Chapter III of the Seychelles Constitution
- ▶ initiate proceedings relating to the constitutionality or provision of a law.

Section 2 of Schedule 5 prohibits the Ombudsman from investigating matters that concern:

- ▶ actions taken by the president, vice-president or the relevant minister concerning dealings between the government of Seychelles and any other government or international organisation or the security of the republic or investigation of a crime
- ▶ the performance of a judicial function or a Justice of Appeal, judge or person performing a judicial function
- ▶ directions to a disciplinary force or member of the force. Note these include the police, navy, air force, military and prison service and similar forces
- ▶ grievances from persons that are not citizens or residents of Seychelles or grievances that did not occur in Seychelles concerning rights or obligations that arose or accrued in Seychelles.

Article 144 of the Seychelles Constitution provides that the Ombudsman is appointed for seven years and is eligible for re-appointment. The office of the Ombudsman becomes vacant at the end of a period of tenure when the Ombudsman is not re-appointed, the person holding the office of the Ombudsman dies, or the Ombudsman provides his or her resignation to the president in writing.

## **2.7 Enforcing rights under the constitution**

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be adequately enforced. The Seychelles Constitution addresses the issue and tries to ensure that rights are effective.

Article 40 of the Seychelles Constitution makes it the duty of every citizen of Seychelles to uphold and defend the constitution and the law. Article 46 provides that any person who claims that any provision of the Seychelles Charter of Fundamental Human Rights and Freedoms has been, or is likely to be contravened, by any law, act or omission may apply to the Constitutional Court for redress.

Another way in which the Seychelles Constitution protects rights and freedoms is by article 91(1). It provides that any changes to Chapter III, the Seychelles Charter of Fundamental Human Rights, must be approved by a national referendum, in which 60% of the votes cast approve the amendment.

The constitution envisages the right of people, including the media, to approach a body, such as the Ombudsman or the courts, to assist in the enforcement of rights.

## **2.8 The three branches of government and separation of powers**

All too often, politicians, commentators and journalists use political terms such as branches of government and separation of powers, but working journalists may not have a clear idea what these terms mean.

### **2.8.1 Branches of government**

It is generally recognised that government power is exercised by three branches of government, the executive, the legislature and the judiciary.

#### **The executive**

In Seychelles, executive power is vested in the president in terms of article 66(1). It should be noted that, in terms of 61(3), executive authority may be exercised by the president directly or via subordinate officers. The president is responsible for a ministry or department until and unless he specifically assigns responsibility to the vice-president or a minister.

Article 66A of the Seychelles Constitution provides for the office of the vice-president. It makes it clear that the functions of the vice-president will be assigned to him or her by the constitution, the president and acts of the National Assembly.

In terms of article 67, the Cabinet consists of the vice-president and ministers. The president presides over meetings of the Cabinet and, in his or her absence, the vice-president chairs the Cabinet. In terms of article 68, Cabinet is responsible for advising the president on government policy and other matters referred to it by the president.

In terms of article 69 of the Seychelles Constitution, the president may, with the approval of the majority of the National Assembly, appoint between seven and 14 persons as ministers. Article 70 provides that the president assigns portfolios and responsibilities to ministers.

The executive is responsible for developing government policy, which is to inform the development of such bills. The role of the executive is to administer or enforce laws, make government policy and propose new laws.

### **The legislature**

In terms of article 85, the legislative authority that is the power to make laws in Seychelles is vested in the National Assembly. In terms of article 79, the vast majority of members of the National Assembly are elected by general, direct and secret ballot. However, ten members of the National Assembly must be elected based on proportional representation following Schedule 4 of the constitution. Section 2 of schedule 4 provides that, for every 10% of the total votes cast in a general election that a political party receives, that party may elect one member of the National Assembly.

In terms of article 86 of the Seychelles Constitution, the National Assembly exercises legislative authority by passing bills which must be assented to by the president. A bill that has been passed by the National Assembly and assented to by the president becomes an act and must be published in the Gazette as soon as is practical after which it becomes law.

Article 87 of the Seychelles Constitution empowers the president to refuse to assent to a bill where he or she believes that it infringes, or may infringe the constitution. The president must then refer the bill to the Constitutional Court for a decision concerning its constitutionality as soon as is practically possible but not later than fourteen days. The Constitutional Court must inform both the president and the Speaker of the National Assembly of its decision. If the bill infringes any provision of the constitution, it must be returned to the Speaker.

Article 88 provides that when the president withholds assent for a bill, he or she must return the bill to the Speaker of the National Assembly, within fourteen days along with written reasons for his or her refusal for assent. Three months after a bill is returned to the Speaker of the National Assembly, and with voted approval of no fewer than two-thirds of the National Assembly, the bill may be returned to the president for assent and the bill will be assumed to have been assented to following the expiration of fourteen days.

It should be noted that article 91(1) of the Seychelles Constitution provides that any amendment to Chapters I and III, article 91, or articles 110 and 111 (the latter two articles relate to the dissolution of the National Assembly) have to be put to a national referendum, which must obtain at least 60% approval. After that, the National Assembly is also required to vote on the amendment with a two-thirds majority vote. If the National Assembly fails to support a 60% or more referendum-approved amendment by a two-thirds majority, then the National Assembly is to be dissolved by presidential proclamation, and a general election must take place, article 110(4)(a).

Article 91(2) requires that the National Assembly must pass any other amendments to the constitution by a two-thirds majority vote without the need for a public referendum.

In terms of article 106, the National Assembly shall begin on the first meeting and shall be dissolved in the event of a general election.

It should be noted that article 110(1)-(3) of the Seychelles Constitution empowers the president to dissolve the National Assembly for any reason that he or she believes to be in the national interest no more than once in a five-year presidential term. However, in terms of article 110(5), the president may not dissolve the National Assembly during a state of emergency or during proceedings to remove him or her.

Article 111 allows the National Assembly to dissolve itself should a motion for dissolution be voted on and the motion receives two-thirds approval.

### **The judiciary**

The judicial power, as discussed above, is vested in the courts. The primary role of the judiciary is to interpret the law and to adjudicate legal disputes following the law. The judiciary has no powers of enforcement.

#### **2.8.2 Separation of powers**

In a functioning democracy, it is important to divide government power between different organs of the state to guard against the centralisation of power, which may lead to abuse. This is known as the separation of powers doctrine. The aim, as the Seychelles Constitution has done, is to separate the functions of the three branches of government, the executive, legislature and judiciary, so that no single branch can operate alone, assume complete state control and amass centralised power. While each branch performs several different functions, each also plays a watchdog role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and following the constitution.

### **2.9 Weaknesses in the constitution that ought to be strengthened to protect the media**

The internal limitations applicable to fundamental rights, such as the rights to freedom of expression and privacy, ought to be repealed because they weaken the rights. Instead, a general limitations clause should be introduced, providing the government with the power it needs to limit fundamental rights as reasonably necessary.

## **3 The media and legislation**

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In this section, you will learn:

- ▷ Legislation: An introduction
- ▷ Legislation governing the media generally
- ▷ Legislation governing the print media
- ▷ Legislation governing films
- ▷ Legislation governing the broadcasting media generally
- ▷ Legislation governing state broadcasting
- ▷ Legislation governing radio frequency spectrum
- ▷ Legislation governing the internet
- ▷ Legislation that threatens a journalist's duty to protect sources
- ▷ Legislation that prohibits the publication of certain kinds of information
- ▷ Legislation that specifically assists the media in performing its functions

### **3.1 Legislation: An introduction**

#### **3.1.1 What is legislation and how it comes into being**

Legislation is a body of law consisting of acts properly passed by the legislative authority. Legislative authority in Seychelles is vested in the National Assembly. Legislation or statutes are therefore acts of the National Assembly made into law.

Article 86 of the constitution provides that all bills approved by the National Assembly must be referred to the president for assent. They become law once published in the Government Gazette. The president may withhold consent to a bill under article 87 if he or she has concerns regarding its constitutionality and informs the Speaker of National Assembly and the Constitutional Court.



The Attorney General refers the bill to court for a ruling on its constitutionality. If the court finds that the bill is not constitutional, it is returned to the National Assembly.

Article 91(2) of the Seychelles Constitution provides that two-thirds must approve any legislation amending the constitution of the National Assembly. Article 91(1) of the constitution provides that no amendments can be made to Chapter III of the constitution unless passed in a referendum that receives a minimum of 60% of the vote after which it must be passed by the National Assembly. Should the National Assembly refuse to pass an amendment voted for in a referendum, the National Assembly must be dissolved in term of article 111.

### **3.1.2 The difference between a bill and an act**

A bill is a draft law that is debated and usually amended by parliament during the law-making process. If a bill is passed by parliament, the National Assembly, it becomes an act once it is signed by the president (signifying his assent to the bill) and published in the Government Gazette, in terms of article 86 of the Seychelles Constitution.

## **3.2 Legislation governing the media generally**

Two acts are important in the governance of the media generally:

- ▶ Seychelles Media Commission Act, Act 36 of 2010 (SMC Act)
- ▶ Licences Act, Act 23 of 2010 (Licences Act).

### **3.2.1 The SMC Act**

#### **Establishment of the Seychelles Media Commission (SMC)**

Section 3 of the SMC Act establishes the SMC as a body corporate. The SMC is, except as provided for in the SMC Act or any other law, not subject to direction or control of any person of authority in performing its functions.

Essentially the SMC is a media content regulator. It is not responsible for licensing or other regulatory functions.

#### **The composition of the SMC**

In terms of section 4 of the SMC Act, the SMC consists of a chairperson, who is also the chief executive officer, and seven other members all appointed by the president. Five of the members of the SMC appointed by the president must be candidates proposed by each of the following groups:

- ▶ the Seychelles Media Association or such other body as may for the time represent journalists and media professionals
- ▶ the National Assembly

- ▶ the judiciary
- ▶ the department responsible for information
- ▶ the Liaison Unit for Non-Governmental Organisations (Lungos).

The two other members must be persons of good standing appointed by the president.

The chairperson is appointed from candidates proposed by the Constitutional Appointments Authority.

In terms of section 6 of the SMC Act, the members of the SMC shall hold office for three years and are eligible for reappointment.

In terms of section 5 of the SMC Act, the president must publish the names of the members of the SMC in the Gazette.

### **Committees of the SMC**

Section 8 empowers the SMC to establish committees to carry out specific functions. The committees shall perform only those functions that have been assigned to them by the SMC.

### **Powers and functions of the SMC**

In terms of section 13(1) of the SMC Act, the objects of the SMC are to preserve the freedom of the media, improve and maintain high standards of journalism in Seychelles, require publishers of newspapers, radio and television broadcasters, news agencies and journalists to respect human dignity, ensure freedom from discrimination on any grounds except as are necessary in a democratic society, and to maintain high standards of integrity and good taste.

In terms of section 13(2) the SMC, in furthering its objectives, may:

- ▶ provide independent arbitration between different types of media organisations and between members of the public and media organisations
- ▶ promote the independence of the print and electronic media
- ▶ formulate, in consultation with the Seychelles Media Association, a Code of Conduct for publishers of newspapers, radio and television broadcasters, news agencies, publishers of online publications and journalists. This Code of Conduct has been formulated and is dealt with in section 4.4 below
- ▶ monitor adherence to the Code of Conduct and require compliance by all concerned
- ▶ monitor compliance by all media of constitutional and legal obligations in force in Seychelles in respect of media freedom and expression

- ▶ monitor any developments likely to restrict the dissemination of information, including expression of opinions on matters of public interest and importance, and assist in resolving them
- ▶ defend the constitutional right of the citizens to accurate, truthful and timely information
- ▶ assist journalists and broadcasters in developing and maintaining high standards of integrity in the collection and dissemination of news and information in and about Seychelles
- ▶ assist and encourage the interaction between local media organisations and foreign media organisations, including training institutions, with the object of improving the standard of journalism in Seychelles
- ▶ receive complaints from members of the public relating to any infringement of the individual's right to privacy by journalists or agents of media organisations and sanction journalists or media organisations according to law
- ▶ promote a proper functional relationship among all classes of persons engaged in print and electronic media in Seychelles
- ▶ promote the development of privately-owned print and broadcast media
- ▶ undertake such other activities within its mandate as may be assigned to the SMC by the government including, but not limited to:
  - ▶ reviewing existing legislation governing broadcasting and the print media and making recommendations to the government to bring them in line with the constitution and current trends
  - ▶ reviewing and making recommendations to open radio or television stations, or to publish newspapers and similar print publications
  - ▶ maintaining a national database of media practitioners and institutions.

### **SMC complaints procedure**

Section 14 sets out the complaints process. If the SMC receives a complaint that a media practitioner has contravened the standards of journalistic ethics and decency embodied in the Code of Conduct or that an editor or working journalist has committed any professional misconduct, the commission may, after giving the publisher of the newspaper, broadcaster, news agency and or the editor or journalist concerned, an opportunity of being heard, hold an inquiry. If it is satisfied that it is necessary the SMC may warn or admonish the media practitioner in writing.

In terms of section 15, the SMC may hold an inquiry and in so doing it shall have the same powers and authority as a commission of enquiry established under the Commissions of Enquiry Act. It should be noted that the SMC may not compel any media practitioner to disclose the source of any news or information published or broadcast by that newspaper or broadcaster or received or reported by that news agency, editor or journalist.

### **Funds of the SMC**

In terms of section 16 of the SMC Act, the government give the SMC grants as necessary for the performance of its functions under the SMC Act.

### **Making regulations concerning the SMC Act**

Section 23 of the SMC Act empowers the minister responsible for media affairs, on the recommendation of the SMC, to make regulations to carry out the provisions of the SMC Act.

### **Is the SMC an independent regulator?**

The SMC does appear to be an independent regulator, responsible for regulating media in Seychelles. The president appoints the SMC members following an appointments process from various stakeholders, including private enterprise. Regulations, while passed by the minister responsible for media affairs, can be passed only on the recommendation of the SMC, this could, of course, be improved by removing the role of the minister entirely. The SMC is also responsible for its own rules and procedures.

However, the SMC is not responsible for licensing, which is the single most critical regulatory function of a media regulator. The SMC Act ought to be amended to make licensing one of the functions of the SMC.

## **3.2.2 The Licences Act**

### **Establishment of the Seychelles Licensing Authority**

Section 3 of the Licences Act, Act 23 of 2010 (Licences Act) establishes the Seychelles Licensing Authority (SLA). The SLA is responsible for licences issued in Seychelles, and so its area of authority reaches far beyond the media. Media licensing (for example, print and broadcast licensing) is just one of the licensing roles that the SLA performs. Other licensing functions cover the full ambit of economic activity in Seychelles and include pig breeding, building and maintenance, tourism, health care and motor vehicle dealers. The Licences Act does not refer to the media specifically. However, and as is set out in section 4 below, regulations governing the print media require print media operators to have a licence issued by the SLA. The Broadcasting and Telecommunications Act, dealt with in paragraph 3.5 below, requires all broadcasting services to have a licence issued by the SLA.

### **Composition of members of the SLA**

In terms of section 4 of the Licences Act, the SLA is administered by a board of not less than five members appointed by the president. The president must appoint one of the members to be the chairperson. In terms of section 5 of the Licences Act, the president must appoint a Chief Executive Officer for the SLA who is responsible for the affairs of the SLA subject to the direction of the SLA board.

## Functions and powers of the SLA

In terms of section 9(1) of the Licences Act where a licence is required under the Licences Act, the SLA may:

- ▶ grant or renew a licence
- ▶ determine or amend licence conditions
- ▶ suspend or revoke a licence.

Section 9(2) empowers the SLA to consult other public authorities when deemed necessary.

Section 9(1)(c) read with section 3, empowers the SLA to suspend or revoke a licence on the recommendation of another public authority where the activity is under the control, superintendence or management of that other public authority. The effect of this is that the SMC would be the public authority responsible for managing the media and it would recommend the suspension or revocation of a media licence by the SLA if it is of the view that this is necessary for the interests of the media sector.

Following the conviction of any person by a court of law, section 9(3)(b) empowers the SLA to suspend, cancel or revoke any licence issued to that person. The court may temporarily suspend any licence issued by the SLA for 21 days and must inform the SLA of such suspension. Section 26 also empowers the SLA to revoke a licence on the conviction of a licensee.

In terms of section 10 of the Licences Act, the SLA may in the exercise of its functions:

- ▶ require any person to furnish any information on any matter relating to a licence
- ▶ summon a person to appear before the SLA to answer questions, or provide any information, as the SLA may specify
- ▶ administer an oath to a person appearing before it to allow for that person to make an affirmation or declaration
- ▶ nominate, appoint or authorise any person, or public authority, to enquire and report on:
  - ▶ a licence application
  - ▶ a breach of a licence condition
  - ▶ the renewal, suspension or revocation of a licence
  - ▶ a complaint against a licensee.

### **Funding for the SLA**

Section 15 of the Licences Act provides that the SLA is funded by money appropriated by an Appropriation Act and paid to the SLA.

### **The Appeals Board**

Section 18 of the Licences Act establishes the Appeals Board made up of members appointed by the president, including a chairperson, a representative of the Attorney General, a representative of the Fair Trading Commission and a representative of a non-governmental organisation that represents the interests of the private sector. In terms of section 17 of the Licences Act, any person aggrieved by a decision of the SLA may submit a notice of appeal to the Appeals Board.

In terms of section 19, the Appeals Board may confirm, vary, quash the decision of the SLA or order it to reconsider its decision.

### **Licences**

Section 20(1) of the Licences Act prohibits any person from engaging in any activity that requires a licence under the Licences Act without a licence issued by the SLA.

In terms of section 21 of the Licences Act, applications for licences must be made to the SLA and must contain any particulars the SLA may require. Where an application for a licence is approved, section 22 provides that the fee for the first year of the licence must be paid before the licence is granted. The licence fee for every subsequent year must be paid before the start of the following year. If a licensee fails to pay the prescribed licence fee, the licence shall cease to be valid.

### **Offences and penalties**

Section 24 of the Licences Act makes it an offence for any person to:

- ▶ fail to furnish any information required by the SLA when required to do so
- ▶ fail to comply with a summons issued by the SLA
- ▶ fail to answer a question put to the person by the SLA
- ▶ give false evidence or make a false statement to the SLA
- ▶ obstruct a member of the SLA from exercising his or her functions
- ▶ act in contempt of the SLA
- ▶ operate a business for which a licence is required under the Licences Act without a licence
- ▶ contravene any condition of a licence issued under the Licences Act.

In terms of section 25 of the Licences Act, the penalty for the above offences is a fine or imprisonment.

### **Making regulations under the Licences Act**

Section 28 of the Licences Act empowers the minister responsible for the Licences Act to make regulations to carry out the provisions of the Licences Act.

### **Amending the legislation to strengthen the media generally**

Given the vital role the media plays in society, it is unusual for licensing of the media to be done by a general non-sector-specific licensing authority. However, this may be a particular anomaly given that Seychelles is a country with a population of fewer than 100 000 people.

Nevertheless, it would be preferable, from a global best practice point of view, for the SMC to have licensing functions concerning the media instead of the SLA.

## **3.3 Legislation governing the print media**

The print media in Seychelles is regulated by the Newspaper Act, Act 20 of 1935 (Newspaper Act). Unfortunately, some of the provisions of legislation place restrictions on the ability to operate as a print media publication in Seychelles.

### **3.3.1 Requirements associated with registration**

The critical registration provisions of the Newspaper Act are as follows:

In terms of section 3 of the Newspaper Act, no person is entitled to publish a newspaper intended for public dissemination unless the newspaper proprietor, publisher and editor have all sworn before a judge and registered at the ministry an affidavit containing:

- ▶ the name of the newspaper
- ▶ the description of the building where the newspaper is to be published
- ▶ the names and addresses of the proprietor, publisher and editor of the newspaper.

Section 3 also provides that the minister may require the publisher to execute a bond to register a newspaper, guarantee by a bank or an assurance company may be accepted instead of such bond.

In terms of section 5 of the Newspaper Act, any material changes to the particulars of the newspaper, including the names or residences of the proprietor, printer, publisher or editor, the address of the newspapers, a change of the printing house, or the title of the newspaper must be registered with a new affidavit with the ministry.

Note that besides the registration requirements, print media operators also require a licence in terms of regulations published under the Newspaper Act, as is more fully dealt with in section 4 below.

### **3.3.2 Requirements placed on the print media**

In terms of section 19 of the Newspaper Act, the editor of a newspaper must publish free of charge any official communication sent to the newspaper for publication by or on behalf of the president.

### **3.3.3 Penalties for non-compliance with the Newspaper Act**

Section 9 of the Newspaper Act makes it an offence to print, publish or cause to be printed or published, or sell or freely distribute any newspaper that is not registered or does not have a bond or surety. On conviction, the penalty for this offence is a fine.

Section 12 of the Newspaper Act makes it an offence for any newspaper to be printed or distributed, without the name and address of the publisher, editor and printer at the foot of the last page. On conviction, the penalty for this offence is a fine.

Section 13 of the Newspaper Act makes it an offence not to file one copy of every publication printed with the ministry. On conviction, the penalty for this offence is a fine for each copy not filed.

Section 20 of the Newspaper Act makes it an offence for any editor to fail to publish any official communication sent to the newspaper for publication in terms of section 19. On conviction, the penalty for this offence is a fine.

Section 21(1) of the Newspaper Act provides that whenever a person is convicted of printing or publishing or causing to be printed or published in any newspaper any seditious or other libel, the court may, in place of any other penalty:

- ▶ prohibit the publication of the newspaper for a period not exceeding three years
- ▶ prohibit the proprietor or editor from publishing, writing editing or providing any service for any newspaper, whether for money or not, for a period not exceeding three years
- ▶ the seizure or closure of printing press used in the production of the newspaper
- ▶ the publishing of any penalty for the offence, at the convicted person's cost, if the publication of the newspaper has not been prohibited.

Section 21(2) provides that the court may impose an increase of the bond required of the newspaper up to 5 000 rupees.

It is important to note that any person who contravenes section 21 of the Newspaper Act is guilty of an offence, the penalty for which, on conviction, is a fine, imprisonment or both.



### **3.3.4 Making regulations concerning the Newspaper Act**

In terms of section 22 of the Newspaper Act, the minister is empowered to make regulations prescribing the fees to be paid on the registration of affidavits and bonds and for generally implementing the Newspaper Act.

## **3.4 Legislation governing films**

Film in Seychelles is governed under the Film Classification Board Act, Act 2 of 1994 (FCB Act).

### **3.4.1 Establishment of the FCB**

Section 3 of the FCB Act establishes the Film Classification Board (the FCB) consisting of members appointed by the minister responsible for the administration of the FCB Act. The minister may designate one of the members he or she appointed to the FCB as the chairperson.

### **3.4.2 Functions of the FCB**

In terms of section 4 of the FCB Act, the FCB must determine whether a film is suitable for viewing, either generally or subject to restrictions. In deciding whether or not a film is suitable for viewing, the FCB may:

- ▶ view the film
- ▶ test the quality of the recording
- ▶ require excisions from the film
- ▶ classify the film.

Where the FCB determines a film is suitable for viewing, it must issue a classification certificate. It should be noted that, in terms of section 4(7), the board may prescribe any necessary fees required for the classification of films, to be credited to the Consolidated Fund. The FCB may refuse to make a determination until the fee has been paid, section 4(8). In terms of section 5, classification certificates issued by the FCB must include a statement concerning whether or not the film is suitable for general viewing or is subject to a restriction.

In terms of section 6, any person who is aggrieved by a decision of the FCB may appeal to the minister. The FCB must give effect to the minister's decision.

### **3.4.3 Exhibiting films**

In terms of section 7 of the FCB Act, any person who, in the course of their business operations, wishes to exhibit a film, or in the case of a broadcasting service wishes to broadcast a film, before exhibition or transmission must submit the film to the FCB for classification in accordance with section 4.

Section 8 prohibits any person from exhibiting, selling, hiring out or transmitting (it is assumed this includes broadcasting) a film before the FCB has decided on its suitability. Section 9 prohibits anyone from possessing, hiring, broadcasting or selling, a film to transmit that the FCB has determined is not suitable for viewing.

In terms of section 10(1), where a film has been determined suitable for viewing under an age restriction, the exhibiting, selling or hiring out of that film to a person who has not reached the required age is prohibited. Section 10(3) provides that where a film with an age restriction is broadcast to a television receiver, the film must be broadcast with a warning before the transmission.

In terms of section 11 of the FCB Act, any film that has received a classification certificate may be exhibited, sold or hired out only if the film, spool, case, thing or advertisement identifies any restrictions placed on it by the FCB, and it does not contain any false or inaccurate restriction identification.

#### **3.4.4 Enforcement of the FCB Act**

In terms of section 12, any person who contravenes section 8, 9, 10 or 11 of the FCB Act commits an offence, the penalty for which is a fine or imprisonment.

Section 13 empowers an authorised person to enter premises kept or used for exhibiting, transmitting, viewing, hiring, or selling a film to ascertain whether there is compliance with the provisions of the FCB Act. Any person who wilfully obstructs an authorised officer in the exercise of their powers commits an offence, the penalty, on conviction, is a fine or imprisonment.

#### **3.4.5 Making regulations relating to the FCB Act**

In terms of section 14 of the FCB Act, the minister may give policy directions to the FCB concerning the exercise of its functions.

In terms of section 16, the minister may make regulations for carrying out the provisions of the FCB Act.

#### **3.4.6 Weaknesses of the FCB Act that should be amended**

The FCB Act has several weaknesses that undermine the independence of the FCB and ought to be amended. The president should appoint members of the FCB following a public nominations process and in consultation with the National Assembly and not by the minister.

The FCB should make its policies concerning its functions and should be responsible for making regulations, not the minister.

### **3.5 Legislation governing the broadcast media generally**

Broadcasting in Seychelles is governed in terms of the Broadcasting and Telecommunication Act, Act 2 of 2000 (Broadcasting Act).

### 3.5.1 Broadcasting licences

Section 3(1) of the Broadcasting Act prohibits any person from providing a broadcasting service without a licence issued by the SLA under the Licences Act (discussed above).

Section 3(3) of the Broadcasting Act provides that broadcasting licences may be granted only to a body corporate incorporated by or under a Seychelles Act and not the applicant:

- ▶ already holds a licence or directly or indirectly controls or is controlled by a body corporate which already holds a licence
- ▶ is a religious organisation or a body corporate which is affiliated to a religious organisation
- ▶ is a political party or body corporate which is affiliated to a political party
- ▶ has been declared insolvent or convicted of sedition or any offence involving fraud or dishonesty.

Section 5 prohibits any person from operating a radio communication network without a licence. Radio licences must specify:

- ▶ the radio frequency spectrum allocated to the licensee
- ▶ the description of the antenna and transmitter to be used
- ▶ the geographical area in which a mobile transmitter, where applicable, may be used
- ▶ the location of a fixed transmitter
- ▶ any obligation to share allocated frequency
- ▶ such particulars as the minister responsible for broadcasting and telecommunication may deem necessary.

In terms of section 7 of the Broadcasting Act, broadcasting licences issued by the SLA may be issued with such conditions as it may deem necessary and for a specified period. The SLA may revoke or suspend any licence required under the Broadcasting Act if the licensee:

- ▶ fails to pay any required fees
- ▶ fails to comply with any provision of the Broadcasting Act of the Licences Act in so far as a provision applies to the licence
- ▶ fails to comply with any term, condition or restriction of a licence.

The SLA may revoke a licence where it determines the revocation is in the national interest.

Should a licensee be aggrieved by a decision to revoke a licence by the SLA, the licensee may appeal the decision under section 15 of the Licensing Act.

Section 10 of the Broadcasting Act prohibits the transfer of a licence without the consent of the SLA.

### **3.5.2 Powers of the minister**

In terms of section 12 of the Broadcasting Act, the minister responsible for broadcasting and telecommunication is responsible for the general supervision of all matters relating to broadcasting and telecommunication. In exercising the powers conferred by the Broadcasting Act, the minister must:

- ▶ take all reasonable measures to ensure that broadcasting services meet the demands of Seychelles
- ▶ promote the interests of consumers, purchasers and other users of broadcasting services concerning prices charged and the quality and variety of such services
- ▶ promote and maintain competition among persons engaged in commercial activities connected with broadcasting services
- ▶ promote the goals of universal services.

Section 14 of the Broadcasting Act empowers any public officer authorised in writing by the minister, to ensure the provisions of the Broadcasting Act are complied with, to:

- ▶ enter any building, place, ship or aeroplane
- ▶ inspect any broadcasting apparatus installed or used in any building, place, ship or aeroplane
- ▶ inspect any licence granted under the Broadcasting Act.

In terms of section 16 of the Broadcasting Act, if in the minister's opinion, any matter intended for broadcasting is objectionable, he or she may prohibit the broadcasting of that material.

### **3.5.3 Obligations of a broadcasting licensee**

In terms of section 18 of the Broadcasting Act, licensees may enter any property at a reasonable time including any required preliminary surveys or for the erection of broadcasting apparatus to establish a broadcasting service.

In terms of section 29 of the Broadcasting Act, every person who provides a broadcasting service must ensure that consumers or users of the service do not suffer injury.

In terms of section 36, the minister responsible for broadcasting and telecom-

munication may order a licensee to transmit any messages and information as may be specified at a time of emergency.

#### **3.5.4 Enforcement of the Broadcasting Act**

Section 21 of the Broadcasting Act makes it an offence for any person to contravene sections 3, 4, 5 or 6 of the Licensing Act. The penalty is the confiscation of any broadcasting apparatus to be disposed of in such a manner as the minister may direct.

Section 23 makes it an offence for any person to hinder or obstruct any person from exercising their functions under the Broadcasting Act. The penalty is a fine or imprisonment.

Section 24 makes it an offence for any person to fail or refuse to comply with any order given under section 15, 16 or 36 of the Broadcasting Act. The penalty is a fine or imprisonment.

Section 25 makes it an offence for any person to destroy broadcasting apparatus. The penalty is a fine or imprisonment.

#### **3.5.5 Making regulations relating to the Broadcasting Act**

Section 38 of the Broadcasting Act empowers the minister responsible for broadcasting and telecommunication to make regulations for carrying out the provisions of the Broadcasting Act.

#### **3.5.6 Amending the legislation to strengthen the broadcast media**

The Broadcasting Act does not comply with international best practice because of the powers of the executive concerning broadcasting, including the power to make regulations. The Broadcasting Act ought to be amended to empower the SMC or a similar independent statutory body to regulate all aspects of broadcasting, including, as has already been suggested, licensing and making regulations.

### **3.6 Legislation governing state broadcasting**

State broadcasting in Seychelles is governed by the Seychelles Broadcasting Corporation Act, Act 2 of 2011 (SBC Act).

#### **3.6.1 Establishment of the Seychelles Broadcasting Corporation (SBC)**

Section 3 of the SBC Act establishes the Seychelles Broadcasting Corporation as an independent corporation that shall operate separately from the state and political or other influence from persons or political parties.

#### **3.6.2 The SBC board**

In terms of section 4 of the SBC Act, the direction and management of the affairs of the SBC are to be vested in a board which may exercise the powers provided for under the SBC Act.

The SBC board consists of a chairperson, and six other members appointed by the president. The chairperson and two of the members appointed by the president must be selected from three candidates proposed by the Constitutional Appointments Authority. The chairperson must have special knowledge or experience in matters relating to administration, management, broadcasting, education, literature or culture. One member must have special knowledge or practical experience of the media, and one member must have special knowledge or practical experience of financial matters. Section 5(1) of the SBC Act provides that the appointment of the SBC board chairperson and members must be published in the Gazette.

In terms section 5(3) and (4) of the SBC Act, the president must appoint a chief executive officer of the SBC who, subject to the direction of the SBC board, must discharge such functions of the board as it may delegate to him.

Section 6 of the SBC Act provides that the term of office for a member of the SBC board is six years.

### **3.6.3 Functions and powers of the SBC board**

In terms of section 9(1) of the SBC Act, the primary function of the SBC board is to organise and conduct public broadcasting services to inform, educate and entertain the public and ensure a balanced development of broadcasting on radio and television. In performing its functions, section 9(2) provides that the objectives that guide the SBC board are to:

- ▶ uphold the unity and integrity of the country and the values enshrined in the constitution
- ▶ safeguard the right of citizens to be informed freely, truthfully and objectively on all matters of public, national and international interest and must present a fair and balanced flow of information with contrasting views, without advocating a position or ideology
- ▶ provide adequate coverage in the fields of literacy, agriculture, community development, the environment, health, family values, science and technology
- ▶ provide adequate coverage of educational programmes
- ▶ provide adequate coverage of sports and games and encourage healthy competition and a spirit of sportsmanship
- ▶ provide appropriate programmes for the youth
- ▶ safeguard the rights of citizens and advance their welfare
- ▶ protect the interests of the elderly, children, persons with disabilities and other vulnerable sections of the community
- ▶ provide comprehensive broadcast coverage using appropriate technology and radio frequency spectrum

- ▶ promote research and development and keep radio and television broadcasts up to date
- ▶ expand broadcasting facilities and establish additional channels
- ▶ ensure programmes are of a high standard and cover a wide range of subjects
- ▶ ensure that programmes do not offend decency, offend public morality, outrage the public or create ill will between different groups.

Section 9(3) of the SBC Act empowers the SBC board to take such action as it sees fit to:

- ▶ ensure that broadcasting is conducted as a public service
- ▶ establish a system for gathering news for radio and television
- ▶ negotiate for purchase or otherwise acquire programmes and rights concerning a wide range of programming, including sports, film, functions, serials, incidents or public interest among others
- ▶ establish and maintain libraries of radio, television and other materials
- ▶ the conduct or commission audience research
- ▶ provide any other service specified in the regulations.

#### **3.6.4 Funds of the SBC**

Section 12 of the SBC Act provides that the funds for the SBC shall consist of:

- ▶ money appropriated by an Appropriation Act
- ▶ money lawfully charged or borrowed by the SBC
- ▶ money due to any investments made by the SBC
- ▶ money legally received by the SBC for the SBC, for example, advertising income.

In terms of section 16 of the SBC Act, the SBC board must prepare an annual report to be given to the minister responsible for information which must be tabled before the National Assembly.

#### **3.6.5 Complaints handling concerning the SBC**

In terms of section 22, any person or group alleging that a specific programme or broadcast, or the functioning of the SBC is not following the objectives for which it was established, or any person, other than officers or employees of the SBC, claiming to have been unfairly or unjustly treated in connection with any broadcast by the SBC, may complain to the SMC in terms of the SMC Act.

### **3.6.6 Enforcement of the SBC Act**

Section 23 of the SBC Act makes it an offence for any person to enter or refuse to leave any premises belonging to the SBC without permission or hinder any member or employee of the SBC from performing his or her functions. The penalty, on conviction, is a fine.

### **3.6.7 Making rules and regulations in terms of the SBC Act**

Section 21 empowers the Minister of Information to make rules for carrying out the provisions of the SBC Act. The rules which the minister may provide relate to:

- ▶ the conditions on which the SBC may appoint its employees
- ▶ how the SBC may invest its money
- ▶ the form and manner in which the annual statements, accounts and report must be prepared
- ▶ any other matter which is required to be prescribed.

In terms of section 26 of the SBC Act, the minister, in consultation with the SBC, is empowered to make regulations to carry out the provisions of the SBC Act.

### **3.6.8 Weaknesses in the SBC Act that should be amended**

Several weaknesses ought to be addressed in the SBC Act these include:

- ▶ the public ought to be involved in making board nominations
- ▶ there ought to be a public interview process for short-listed candidates
- ▶ the role of the minister in the making rules and regulations ought to be removed as the role played by the minister undermines the independence of the SBC and this function ought to be performed by the SMC
- ▶ the annual report and accounts ought to be provided directly to the National Assembly to whom the SBC should be accountable and not to the Minister of Information.

## **3.7 Legislation governing radio frequency spectrum**

Section 37 of the Broadcasting Act empowers the minister responsible for broadcasting and telecommunication to:

- ▶ establish and maintain a national radio frequency plan designed to secure the rational use of radio spectrum in Seychelles
- ▶ ensure the needs of all radio communication licensees are met
- ▶ ensure the monitoring of radio frequency spectrum



- ▶ allocate radio frequency spectrum in such a manner that harmful interference is avoided.

These ought to be functions of an independent regulatory body such as the SMC.

### **3.8 Legislation governing the internet**

Internet-related regulatory provisions are contained in section 13(2) of the SMC Act, which specifically includes internet content providers among the media practitioners for whom the SMC must create a code of conduct. The effect of this is that internet content providers in Seychelles are required to comply with that code and have complaints on their content adjudicated by the SMC.

### **3.9 Legislation that undermines a journalist's duty to protect his or her sources**

A journalist's sources are the lifeblood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and will be respected and protected by a journalist. This is particularly true of so-called whistleblowers, inside sources that can provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often provide special protection for journalists' sources. It is recognised that without such protection, information that the public needs to know would not be given to journalists.

In terms of section 126 of the Criminal Procedure Code, 1955 (CPC), a presiding officer in a court is empowered to call any person who is likely to give material or relevant information as to any alleged offence to come before him or her and to be examined by the public prosecutor or the defendant or his or her advocate. Thus, if a public prosecutor, defendant or his or her advocate suspects that a journalist knows something about a crime such journalist might be ordered to reveal his or her sources of information relating to that crime.

However, it is important to note that whether or not requiring a journalist to reveal a source is an unconstitutional violation of the right to freedom of expression will depend on the particular circumstances in each case, particularly on whether or not the information is available from any other source. Consequently, it is extremely difficult to state that these provisions are, by themselves, a violation of the right to freedom of expression under the constitution.

### **3.10 Legislation that prohibits the publication of certain kinds of information**

Several statutes contain provisions which, looked at closely, undermine the public's

right to receive information and the media's right to publish such information. These statutes are targeted and prohibit the following:

- ▶ publication or possession of seditious material
- ▶ publication of certain information relating to criminal proceedings
- ▶ publication of false news
- ▶ publication of defamation of the president
- ▶ publication of material that defames foreign princes
- ▶ incitement to violence
- ▶ the importation or possession of prohibited publications
- ▶ publication of material with the intent to wound religious feelings
- ▶ defamation.

It is often difficult for journalists to find out how laws that would seem to have no direct relevance to the media can affect their work. Critical provisions of such laws are therefore set out below.

### **3.10.1 Prohibition on the publication or possession of seditious material**

In terms of article 54 of the Penal Code, 1955 (Penal Code) a seditious intention is defined as the intent to bring the president into hatred or contempt, or to excite disaffection against the government, the constitution or the National Assembly, or to seek an alteration to a law by non-legal means, excite disaffection against the administration of justice, raise discontent among the people of Seychelles or promote feelings of ill-will and hostility between parts of the population of Seychelles.

In terms of section 55 of the Penal Code, any person who prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication or imports any seditious publication commits an offence. On conviction, the penalty for this offence is a fine, imprisonment or both.

### **3.10.2 Prohibition on the publication of certain information relating to criminal proceedings**

In terms of section 58C of the Criminal Procedure Code, 1955 (CPC), concerning criminal proceedings being held *in camera*, a court may direct that a newspaper shall not reveal the name, address or any other particular, including a photograph or drawing, that might identify an accused or a witness in the proceeding, except as may be permitted by the court. Any person who contravenes this section of the CPC commits an offence and, on conviction, the penalty is a fine or imprisonment.

### **3.10.3 Prohibition on the publication of false news**

Section 62 of the Penal Code provides that any person who publishes, whether orally, in writing or otherwise, any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing it is false, is guilty of an offence and the penalty is imprisonment.

### **3.10.4 Prohibition on the publication of defamation of the president**

Section 62A of the Penal Code provides that any person who publishes any defamatory or insulting matter intended to bring the president into hatred, ridicule or contempt whether in writing, print, word of mouth or in any other manner, is guilty of an offence. The penalty is imprisonment.

### **3.10.5 Prohibition on the publication of material that defames foreign princes**

Section 63 of the Penal Code provides that any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt, any foreign prince, potentate, ambassador or other foreign dignitaries with intent to disturb peace and friendship between Seychelles and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of a misdemeanour. The section is silent on the penalty, but the Third Schedule to the Criminal Procedure Code stipulates imprisonment on conviction for the offence.

### **3.10.6 Prohibition on incitement to violence**

Section 89A of the Penal Code makes it a misdemeanour offence for any person who, without lawful excuse, utters, prints or publishes any words, or does any act or thing indicating or implying that it is or might be desirable to do, or omit to do any act, the doing or omission of which is calculated to:

- ▶ bring death or physical injury to any person or any class, community or body of persons
- ▶ lead to the damage or destruction of any property
- ▶ prevent or defeat by violence or by other unlawful means the execution or enforcement of any law or to lead to defiance or disobedience of any such law or any lawful authority.

On conviction, the penalty is imprisonment.

### **3.10.7 Prohibition on the importation or possession of prohibited publications**

Section 50(1) of the Penal Code provides that if the president feels that a publication or series of publications published outside Seychelles is contrary to the

public interest, he may, at his absolute discretion, declare the publication, series of publication or any publication made by that person or association of persons prohibited. Should the prohibited publication be a periodical, the prohibition extends to all subsequent publications unless otherwise provided, section 50(2). In terms of section 50(5), any person aggrieved by the declaration of the president may appeal to the secretary of the Council of Ministers. If the secretary refuses to repeal the prohibition, the aggrieved person can appeal to the president whose decision on the matter will then be final.

The section is silent on the penalty, but the Third Schedule to the Criminal Procedure Code stipulates imprisonment or a fine on conviction for the offence.

### **3.10.8 Prohibition on the publication of material with the intent to wound religious feelings**

Section 128 of the Penal Code provides that any person who writes any word, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person with the deliberate intention of wounding their religious feelings is guilty of a misdemeanour. On conviction, the penalty for this offence is imprisonment.

### **3.10.9 Prohibition of defamation**

Chapter XVIII of the Penal Code is headed Defamation. The wording is confusing, but the Chapter appears to distinguish between lawful and unlawful defamatory publication which it terms 'libel'.

In terms of section 184 of the Penal Code, libel is defined as:

*any person who by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of a misdemeanour termed 'libel'.*

Section 185 of the Penal code defines a defamatory matter as:

*matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead. Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Attorney General.*

In terms of section 187 of the Penal Code, any publication of defamatory matter concerning a person is unlawful, unless the matter is true and it was for the public benefit that it should be published, or it is privileged.

There are two types of privilege provided for in the Penal Code, absolute and conditional.

In terms of section 188 of the Penal Code, a matter has absolute privilege when it is:

- ▶ published by the president, the Council of Ministries or the People's Assembly in any official document or proceeding
- ▶ published in the Council of Ministers or the National Assembly by the president or by any member of such council
- ▶ published in the course of any judicial proceedings by a person taking part therein as a judge, magistrate, commissioner, pleader, assessor, witness or party thereto
- ▶ published is a fair report of anything said, done, or published in the Council of Ministers or the National Assembly
- ▶ legally bound to published by the person publishing it.

Where a publication is absolutely privileged, it is immaterial whether the matter is true or false, and whether it is known or unknown or believed to be false, and whether it is published in good faith or not.

In terms of section 189 of the Penal Code, a matter has conditional privilege if it was published in good faith and the person publishing it has a legal, moral or social duty to do so. Also that the publication of the matter does not exceed what is sufficient for the occasion, namely if the matter published:

- ▶ is a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court, provided that, if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral, or blasphemous, the publication thereof shall not be privileged
- ▶ is a copy, reproduction or a fair abstract of any matter which has been previously published, and the previous publication of which was or would have been privileged
- ▶ is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity or as to his personal character so far as it appears in such conduct
- ▶ is an expression of opinion in good faith as to the conduct of a person concerning any public question or matter, or as to his personal character so far as it appears in such conduct
- ▶ is an expression of opinion in good faith as to the conduct or character of any person as disclosed by evidence given in a public legal proceeding
- ▶ is an expression of opinion in good faith as to the merits of any book, writing,

painting, speech or other work, performance or act published or done publicly

- ▶ is a censure passed by a person in good faith on the conduct or character of another person in any matter in respect of which he has authority
- ▶ is a complaint or accusation made by a person in good faith against another person concerning his conduct or character in any matter by any person having authority over that person
- ▶ is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of a person of interest to the person who published it.

It should be noted that in terms of section 190 of the Penal Code, a publication of a defamatory matter shall not be deemed to have been made in good faith by a person if:

- ▶ the matter was untrue, and that he or she did not believe it to be true
- ▶ the matter was untrue and that he or she published it without having taken reasonable care to ascertain whether it was true or false
- ▶ in publishing the matter, he or she acted with intent to injure the person defamed in a substantially greater degree than was reasonably necessary for the interest of the public or for the protection of the private right or interest of which he or she claims to be privileged.

The chapter is silent on the penalty for libel, but the Third Schedule to the Criminal Procedure Code stipulates imprisonment on conviction for the offence.

### **3.11 Legislation that specifically assists the media in performing its functions**

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of both public and private institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest.

#### **3.11.1 Access to Information Act, Act 4 of 2018 (Access to Information Act)**

The Access to Information Act was ostensibly enacted to foster good governance by enhancing transparency, accountability and integrity in public service and administration and encouraging participation by the public in matters of public affairs. The Access to Information Act recognises the right of access to information envisaged in Article 28 of the constitution.

### The information commission

Section 36 of the Access to Information Act establishes the information commission as a self-governing, independent body corporate that shall not be subject to control or direction by any person or body in the performance of its functions. The information commission is made up of a Chief Information Commissioner and two other Information Commissioners. The president appoints them in consultation with the Speaker of the National Assembly from among candidates proposed by the Constitutional Appointments Authority in terms of section 37 of the Access to Information Act.

In terms of section 48 of the Access to Information Act, the information commission is empowered to:

- ▶ resolve matters by negotiation and mediation when deemed appropriate
- ▶ determine the necessity of an investigation for the determination of any matter
- ▶ authorise or undertake any action for the execution of its mandate under the Access to Information Act
- ▶ issue specific directions in matters concerning confidential information, minors or where it deems appropriate
- ▶ issue written orders requiring information to be produced
- ▶ require information to which access has been refused to be produced
- ▶ limit access to information
- ▶ take any action it deems appropriate for the resolution of any matter before it.

In terms of section 50 of the Access to Information Act, the information commission is required to promote awareness, educate and popularise the right of access to information.

Section 56 of the Access to Information Act empowers the information commission to audit any information holder to ensure compliance with the Access to Information Act.

Any person requesting information, or any third party connected with a request for information, may appeal to the information commission, in writing, concerning matters involving the decisions made by the heads of information holders in terms of section 58 of the Access to Information Act.

In terms of section 63 of the Access to Information Act, in concluding matters before it, the information commission may issue orders:

- ▶ affirming or setting aside the decision of the information holder
- ▶ varying the type of access initially granted

- ▶ requiring the information holder to take any necessary action to bring it into compliance with the Access to Information Act
- ▶ mandating negotiation conciliation or arbitration
- ▶ imposing a fine on the information holder where it has refused access to information without reasonable cause.

### **Requests for access to information**

In terms of section 4 of the Access to Information Act, every public body is required to create keep, organise and maintain its information in good condition and in a form that facilitates access.

Section 5 of the Access to Information Act provides that public bodies are required to provide information following 30 days of its creation proactively. The information requiring proactive disclosure includes:

- ▶ manuals, policy procedures, rules or similar instruments that are used by officers of the body to discharge its functions and handle complaints, make recommendations or provide advice on the rights or obligations a person is entitled to or liable for
- ▶ the name and other particulars of the information officer of a public body
- ▶ any prescribed forms, procedures or rules the public body makes use of when engaging with the public
- ▶ minutes and documents from any meeting between the public body and the public
- ▶ detailed information on how public funds are used, including the amounts, used
- ▶ surveys or studies undertaken by the public body
- ▶ the particulars of its organisation including its functions and duties
- ▶ interpretations of any acts or policies administered by the public body
- ▶ details of its processes for keeping and organising the public body's information
- ▶ a directory of the public body's employees including information relating to the salary band of public employees, including the system of compensation as provided for in its laws and well as the decision-making process of the public body including channels of supervision and accountability
- ▶ detailed travel and hospitality expenses of the public body's employees including any sponsorships or benefits received by each of its employees
- ▶ a description of the composition, functions and appointments procedures of any public body being managed by two or more people



- ▶ detailed financial reports
- ▶ the annual report submitted to the information commission
- ▶ any other information directed by the information commission.

Section 8 of the Access to Information Act provides that every person has the right to access information held by a public body.

Any person may request information from a public body via the information officer, in terms of section 9 of the Access to Information Act. Any request for information must be accompanied by the relevant fees associated with the request. Section 10 provides that the information officer must assist the person requesting the information.

In terms of section 13 of the Access to Information Act, where a request for information has been made to a body that does not hold that information, the information officer must forward the request to the relevant body that does hold the requested information and inform the person requesting the information of the transfer.

Section 14 of the Access to Information Act provides that, if an information officer fails to give a decision on a request for access to information following the prescribed 21 days provided for in section 11 or following an extension provided for in section 12, the request for information will be deemed to have been refused.

Section 15 provides that an information officer may defer a request for information if the information has been prepared for presentation to the National Assembly (this deferment can be for five days), or the information has been prepared to report to an official body or person acting as an officer of the state (this deferment can be for 35 days). In the event of a deferment, the information officer must inform the person requesting the information within 21 days.

Section 16 of the Access to Information Act provides that, if information cannot be found or does not exist and the information officer has taken all reasonable steps to locate or conclude that the information does not exist, he or she must inform the person requesting the information within 21 days.

Section 11(2) of the Access to Information Act provides that where requested information reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer shall provide it within 48 hours.

In terms of section 20 of the Access to Information Act, an information officer may refuse a request for access to information if it is exempted. Exempted information includes:

- ▶ personal information of a third party (section 21), except where:
  - ▶ the third party has consented to its release
  - ▶ the third party has been deceased for more than ten years
  - ▶ the information is in the public domain

- ▶ the information relates to the physical and mental well-being of an individual under the care of the person requesting the information and who is:
  - › under the age of 18 or
  - › unable to understand the nature of the request and to give access to the information is in the best interests of the third party
- ▶ the information about a deceased person is requested by a person who is:
  - › the third-party's next of kin or legal representative has such written consent from either
  - › the executor of the estate
  - › a trustee of a trust which can benefit from the deceased estate
- ▶ the information relates to the position or function of an individual who is or was an official of the information holder or any other public body
- ▶ the third party was given prior notice that the information may be made available to the public
- ▶ information that contains trade secrets or would prejudice a legitimate commercial interest (section 22), except where:
  - ▶ the disclosure would facilitate accountability and transparency
  - ▶ the information relates to the expenditure of public funds
  - ▶ the disclosure would reveal misconduct or deception
  - ▶ the third-party consents to the disclosure
  - ▶ the information is in the public domain
- ▶ the release of the information is likely to endanger the health, life or safety of an individual (section 23)
- ▶ the release of the information would prejudice the defence of the state (section 24)
- ▶ a foreign state or international organisation has supplied the information in terms of an international agreement (section 25(a))
- ▶ the information is required to be held in confidence by international law (section 25(b))
- ▶ the information relates to positions adopted, or to be adopted by the state or another state or international organisation for negotiations (section 25(c))
- ▶ the information constitutes diplomatic correspondence (section 25(d))
- ▶ the release of the information would prejudice the economy of the state (section 26)

- ▶ the release of the information would be prejudicial to law enforcement (section 27)
- ▶ the information is privileged, that is, constitutes communication between a health practitioner or a lawyer and his or her patient or client or confidential communication between his or her source, or is otherwise legally privileged (section 28)
- ▶ the release of the information would be prejudicial to any academic or recruitment process before the conclusion of the process (section 29)
- ▶ the information concerns a proposal submitted to the Cabinet (section 30)
- ▶ the request for information is vexatious (section 32(1))
- ▶ another law provides for the release of the requested information (section 32(2)).

It should be noted that, in terms of section 31 where part of the information requested is exempt from disclosure, that part must be removed, and the remainder of the information must be provided to the person requesting the information.

In terms of section 34, a person who has been denied access to information by an information officer may request the decision be reviewed. Should the information officer not change his or her decision following a request for review, section 35 provides that the person requesting the information may request that the head of the information holder review the decision. Should the head of the information holder fail to give a decision or uphold the denial of access to information, the person requesting the information may submit an appeal to the information commission.

### **Protections and offences relating to access to information**

In terms of section 66 of the Access to Information Act, no person may be held civilly or criminally liable for the release of information disclosed in good faith or under the Access to Information Act. No person may be detrimentally affected in the course of his or her employment for disclosures made in good faith or in terms of the Access to Information Act.

Section 67 makes it an offence for any person to:

- ▶ destroy, damage or alter information
- ▶ conceal information
- ▶ falsify information or make a false record
- ▶ obstruct an information holder from performing his or her duties under the Access to Information Act
- ▶ interfere or obstruct the work of the information commission

- ▶ direct, propose or counsel any person to do any of the above actions.

On conviction, the penalty for these offences is a fine, imprisonment or both.

### **Making regulations**

Section 74 of the Access to Information Act empowers the Minister for Information to make regulations relating to the provisions of the Access to Information Act.

### **3.11.2 National Information Services Agency Act, Act 4 of 2012 (Nisa Act)**

#### **The establishment of the National Information Service Agency (Nisa)**

Section 3 of the Nisa Act establishes Nisa as a body corporate.

#### **The Nisa board**

In terms of section 6 of the Nisa Act, the board of Nisa is made up of five members appointed at the discretion of and by the president. The board is responsible for the policy and control of Nisa. The president must designate one of the members as the chairperson. The members of the Nisa board elect a vice-chairperson from among their number. In terms of section 7 of the Nisa Act, the board members serve for two years and are eligible for re-appointment.

#### **Objects and functions of Nisa**

In terms of section 4 of the Nisa Act, the objects of Nisa are to:

- ▶ operate as an agency for gathering and disseminating information efficiently, objectively, impartially and cost-effectively
- ▶ contribute to the development of mass media in Seychelles
- ▶ promote the economic, political, social and diplomatic interests of Seychelles, both nationally and internationally
- ▶ contribute to national development and nation-building
- ▶ provide information support and be an information outlet for the government, national institutions and the public.

Section 5 of the Nisa Act provides for the numerous functions of Nisa, the ones that are relevant to the media are:

- ▶ to establish and operate facilities to collect and distribute information
- ▶ enter into agreements for the supply to and dissemination from Nisa
- ▶ compile print, produce, publish and distribute the Seychelles Nation Newspaper and other publications

- ▶ provide pre-press services and products to the government and other persons and organisations.

Nisa effectively operates a state press agency concerning its media-related functions.

### **3.11.3 Seychelles Human Rights Commission Act, Act 7 of 2018**

The Seychelles Human Rights Commission Act, Act 7 of 2018 (HRC Act) establishes the HRC, section 3(1).

The Seychelles Human Rights Commission (HRC) is an essential organisation concerning the media. In terms of section 3(2), it is a self-governing, neutral and independent body that is not subject to direction or control from any person or authority.

In terms of section 14 of the HRC Act, the powers and functions of the HRC are:

- ▶ to make recommendations to ministries at all levels of government for the promotion of human rights within the framework of the constitution and the HRC Act
- ▶ to undertake studies to report on human rights
- ▶ to request the head of any organisation or institution, or the principal secretary of any ministry to provide it with any information on legislative or executive measures it has adopted regarding human rights
- ▶ to develop, conduct or manage information and education programmes to foster understanding and awareness of Chapter III of the constitution, the HRC Act and the role and activities of the HRC
- ▶ to maintain close liaison with institutions, bodies and authorities with similar objectives to the HRC to foster common policies and practices, and to promote cooperation concerning the handling of complaints in cases of overlapping jurisdiction or other appropriate instances
- ▶ to liaise and interact with organisations that actively promote respect for human rights
- ▶ to consider the recommendation made for the advancement of human rights originating from any source
- ▶ to review government policies concerning human rights
- ▶ to monitor compliance with international and regional covenants and charters concerning the objects of the HRC
- ▶ to prepare and submit reports to the National Assembly about covenants, treaties or charters concerning the objectives of the HRC

- ▶ to carry out studies referred to it by the president concerning human rights and report on the results and make recommendations associated with such studies
- ▶ to recommend to the president the adoption of legislation which will promote respect for human rights
- ▶ to report to the president any legislation that might contravene Chapter III of the constitution or is contrary to human rights.

Section 5 of the HRC Act provides that the HRC consists of:

- ▶ a chairperson appointed by the president in consultation with the Speaker of the National Assembly
- ▶ a deputy chairperson selected from a panel of three candidates proposed by the Constitutional Appointments Authority
- ▶ three commissioners selected from a panel of three candidates for each proposed post by the Constitutional Appointments Authority.

In terms of section 7(1) of the HRC Act, the chairperson of the HRC may resign by giving the president three months written notice. In terms of section 7(2) of the HRC Act, a member of the HRC may be removed from office when:

- ▶ the term of office has expired
- ▶ the member is absent from three consecutive meetings of the HRC
- ▶ the member is adjudged bankrupt
- ▶ the member is convicted of an offence and sentenced to six months imprisonment without the option of a fine
- ▶ the member is declared of unsound mind or body
- ▶ the member dies
- ▶ the member is removed from office in terms of section 8 of the HRC Act which provides that the president may remove the member on the grounds of gross incompetence.

## **4 Regulations affecting the media**

In this section, you will learn:

- ▷ the definition of regulations

- ▷ key regulations governing print media licences
- ▷ key regulations governing sound broadcasting services
- ▷ the Media Code of Conduct for Seychelles

#### **4.1 Definition of regulations**

Regulations are a type of subordinate legislation. They are legal rules that are made in terms of a statute. Regulations are a legal mechanism for allowing ministers or even organisations such as the SMC, to make legally binding rules governing an industry or sector, without parliament having to pass a specific statute.

The empowering statute will give the minister or a body such as the SMC authority to make regulations, rules or both, on particular matters within the scope of the functions and powers of that minister or body.

#### **4.2 Key regulations governing print media licences**

The Licences Act empowers the minister responsible for the administration of that act to make regulations relating to licences. Subsidiary Legislation: Licences (Newspaper Publisher and Printer) Regulations published on 31 March 1987 (Newspaper Licence Regulations) constitute the regulations associated with applying for a Newspaper Publisher's or Printer's Licence.

In terms of section 3 of the Newspaper Licence Regulations, an application for either a Newspaper Publisher's or Printer's Licence must be submitted to the Seychelles Licence Authority (SLA) on the prescribed form.

Section 4 of the Newspaper Licence Regulations provides that all applications for a newspaper licence must be accompanied by:

- ▶ the fees set out in the schedule of the Newspaper Licence Regulations
- ▶ a deposit of not less than 100,000 Rupees to be used as surety for the satisfaction of any judgments against the applicant
- ▶ a certified copy of the affidavit registered under section 3 of the Newspaper Act.

Should the application for a newspaper licence be unsuccessful, the SLA must refund the licence fees and the surety deposit to the applicant.

Section 5(1) of the Newspaper Licence Regulations requires the SLA to consult with the ministry responsible for information and the ministry responsible for defence before issuing a Newspaper Publisher's Licence.

Section 5(2) of the Newspaper Licence Regulations requires the SLA consult with

the ministry responsible for information, the ministry responsible for planning and the ministry responsible for defence before issuing a Newspaper Printer's Licence.

In terms of section 6 of the Newspaper Licence Regulations, the SLA may refuse to grant a newspaper publisher's licence if it believes that the proposed name for the newspaper is undesirable.

Section 7 of the Newspaper Licence Regulations provides that the SLA may specify licence conditions and may include that:

- ▶ the licensee complies with the provisions of the Newspaper Act
- ▶ the licensee complies with any orders issued by a court concerning the publication and printing of the newspaper
- ▶ Newspaper Printer Licensees must ensure that at the foot of the last page of each copy of the newspaper lists his or her name and address and place of printing
- ▶ licensees must display their licence at the principal place of business.

Section 8 of the Newspaper Licence Regulations provides that a newspaper licence may be granted for five years and is renewable but not transferable.

### 4.3 Key regulations governing sound broadcasting services

The Broadcasting and Telecommunication (Sound Broadcasting Services) Regulations, Subsidiary Legislation 21 of 1994 published on 14 February 1994, (SBS Regulations), were published in terms of section 38 of the Broadcasting and Telecommunications Act which empowers the Minister of Broadcasting and Telecommunication to make regulations.

In terms of section 3 of the SBS Regulations, an applicant wishing to establish a sound broadcasting service must apply for a licence to the Seychelles Licensing Authority (SLA) stating:

- ▶ the place at which the sound broadcasting service is to be established
- ▶ the technical characteristics and specification for an MF sound broadcasting station (these are for frequencies in the range 300 to 3000 kHz) or a VHF sound broadcasting station (these are for frequencies in the range from 30 to 300 MHz)
- ▶ where the applicant is a body corporate, the names of its directors or members of the board
- ▶ the interests of the applicant in other broadcasting or media services, if any
- ▶ expertise and experience of the applicant
- ▶ staff requirements for the operation of the service

why the capitals?



- ▶ additional information as may be required by the SLA.

In terms of section 4 of the SBS Regulations, in granting a licence application for a sound broadcasting service, the SLA must consider:

- ▶ the orderly development of sound broadcasting services
- ▶ the spectrum available
- ▶ the character of the applicant and, where the applicant is a body corporate, the character of its directors or members of the board of management
- ▶ the adequacy of expertise and experience available to the applicant and the means and capacity of the applicant to operate a sound broadcasting service
- ▶ generality, range and type of programmes proposed to be provided by the applicant including those in national languages and those about Seychellois' culture
- ▶ the technological and radio frequency plans of the applicant
- ▶ new opportunities provided by the applicant for Seychellois talent in music, drama, entertainment and other areas of artistic endeavour
- ▶ the desirability of allowing the applicant to control communications media in Seychelles.

It should be noted that, in terms of section 4(2) of the SBS regulations, where the sound broadcasting service is intended to be broadcast only in Seychelles, licences shall be granted only to citizens of Seychelles or a body corporate established under the laws of Seychelles.

In terms of section 6 of the SBS regulations, any sound broadcasting service licensee must ensure that:

- ▶ any broadcast of news by the licensee is presented objectively and impartially without any expression of views by the holder
- ▶ any broadcast of current affairs, including matters which are either of public controversy or subject of public debate, is fair to all interests concerned and the matter is presented objectively and impartially
- ▶ a minimum of such percentage of broadcasting time as may be determined by the minister is devoted to broadcasting news and current affairs
- ▶ anything which may be reasonably regarded as offensive to good taste or decency or as being likely to incite or promote crime or tending to undermine the authority of the State is not broadcast by the holder of the licence
- ▶ programmes broadcast, or the means employed to make such programmes, do not infringe unreasonably on the privacy of individuals

- ▶ rectification of any untrue information transmitted in a programme is, if requested by any person affected by it, made within 48 hours of the request and at the same time of the day as the programme which contained the untrue information
- ▶ due and adequate consideration is given to complaints, which are not frivolous or vexatious, made by any person concerning the broadcasting service and due and proper records of such complaints and any action taken thereon are kept and is made available for inspection by the minister if required
- ▶ programmes broadcast have respect for human personality, individual privacy, human rights, ideals of democracy, good taste and decency and maintain a high standard of national languages
- ▶ compliance with the standards and practices laid down by the minister concerning advertisements, sponsorship of advertising or programmes based on sports or other events
- ▶ broadcast of advertisements does not exceed such percentage of daily broadcasting time as may be determined by the minister or do not exceed seven minutes in an hour
- ▶ not less than 15% of the weekly programming is dedicated to local information or non-commercial programmes concerning Seychelles.

#### **4.4 The Media Code of Conduct for Seychelles**

In terms of section 13(2) of the SMC Act, the SMC, in consultation with the Seychelles Media Association, has developed the Code of Conduct for Media in Seychelles (the Code). According to the preamble, the purposes of the Code are to:

- ▶ protect freedom of expression and promote responsible journalism
- ▶ define, guide and promote ethical behaviour in the media profession
- ▶ ensure respect for human dignity and freedom from discrimination
- ▶ maintain high standards of integrity and good taste
- ▶ safeguard the rights of the public to accurate and truthful information
- ▶ enhance responsibility and accountability on the part of media practitioners
- ▶ resolve conflicts between the public and the media.

To achieve the above purposes, the provisions of the Code are summarised as follows:

##### **4.4.1 Accuracy**

The press should not publish inaccurate, misleading or distorted information, including pictures.

Once a significant inaccuracy, misleading statement or distortion is recognized, it must be corrected promptly and with due prominence and, where appropriate, an apology published.

The press shall clearly distinguish between news, infomercials and advertisements.

The press, whilst free to take a partisan stance, should distinguish between opinion, comment, conjecture and fact.

A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

#### **4.4.2 Opportunity to reply**

A fair opportunity for reply to inaccuracies must be given when reasonably requested.

#### **4.4.3 Privacy**

Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

It is unacceptable to photograph individuals in private places without their consent.

#### **4.4.4 Defamation**

The press shall not engage in character assassination or defamation, which could result in an action for slander or libel.

#### **4.4.5 Harassment**

Journalists should not engage in intimidation, harassment or persistent pursuit of private individuals in their daily life.

They should not persist in questioning, telephoning, pursuing or photographing private individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.

Editors should ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

#### **4.4.6 Intrusion into grief or shock**

In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion, and publication handled sensitively. This should not restrict the right to report legal proceedings.

Photographs and video from conflicts, accidents and crime or disaster scenes shall be used with sensitivity and not add further suffering to victims and relatives and with due regard to the public interest and good taste.

#### **4.4.7 Children**

Young people should be free to complete their time at school without unnecessary intrusion.

A child under 18 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents or is present.

Pupils must not be approached or photographed at school without the permission of the school authorities.

Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards unless it is established that this would not harm the child's interest.

Editors must not use the fame, notoriety or position of a parent or guardian as the sole justification for publishing details of a child's private life.

#### **4.4.8 Children in sex offences cases**

The press must not identify children under 18 who are victims or witnesses in cases involving sex offences.

In any press report of a case involving a sexual offence against a child:

- ▶ the child must not be identified
- ▶ the adult may be identified if a guilty verdict is handed down
- ▶ the word 'incest' must not be used where a child victim might be identified; the offence should be described as 'serious offence against young children' or similar appropriate wording
- ▶ care must be taken that nothing in the report implies the relationship between the accused and the child.

#### **4.4.9 Hospitals**

Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.

The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

#### **4.4.10 Reporting of crime, violence or hatred**

Generally, relatives or friends of persons convicted or accused of a crime should not be identified unless they are genuinely relevant to the story.

Particular regard should be paid to the potentially vulnerable position of children who witness or are victims of, crime. This should not restrict the right to report legal proceedings.

The press should not publish material that may encourage or glorify violence, terrorist activities, ethnic, racial or religious hostilities and xenophobia.

#### **4.4.11 Harm and offensiveness**

The press should avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability unless genuinely relevant to the story.

The press should avoid the use of offensive language, violence, sex, humiliation and expressions that violate human dignity.

The press shall not encourage, glamourise or condone the use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol.

#### **4.4.12 Victims of sexual assault**

The press should not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification, and they are legally free to do so.

#### **4.4.13 Financial journalism**

Journalists must not use the financial information they receive in advance of its general publication for their profit, nor pass such information to others for their profit.

#### **4.4.14 News and information sources**

Journalists have a moral obligation to protect confidential sources of information.

Except for confidential sources, publishers and broadcasters must acknowledge sources wherever and whenever possible and refrain from plagiarism.

As a matter of courtesy, journalists and broadcasters should identify themselves when gathering news and opinions, unless doing so will place them in danger or it is impractical.

Clandestine devices and subterfuge should not be used. The Press should not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices or by intercepting private or mobile telephone calls, messages or e-mails or by the unauthorised or illegal removal of documents or photographs. Engaging in misrepresentation or subterfuge can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

#### **4.4.15 Reporting on judicial proceedings**

*Sub judice* cases:

- ▶ In the interest of justice, the Press shall refrain from publishing detailed accounts of evidence in on-going cases, especially in criminal cases, so that upcoming witness evidence is not influenced.
- ▶ The Press shall not publish interviews of lawyers in a *sub judice* case.
- ▶ The Press can report what is being said in open court to the judge and reserve direct interviews with lawyers until after the verdict has been delivered.

Witness payments in criminal trials:

- ▶ No payment or offer of payment to a witness, or any person who may reasonably be expected to be called as a witness, should be made in any case once proceedings are active. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued, or the suspect has entered a guilty plea to the court or, in the event of a not guilty plea, the court has announced its verdict.
- ▶ Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest, and there is an over-riding need to make or promise payment for this to be done, and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.
- ▶ Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

#### **4.4.16 Payment to criminals**

Payment or offers of payment for stories, pictures or information which seek to exploit a particular crime or to glorify or glamourise crime in general, should not be made directly or via agents to convicted or confessed criminals or to their associates, including family, friends and colleagues.

Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If despite payment, no public interest emerged, then the material should not be published.

#### **4.4.17 Gender sensitivity**

The press should be gender-sensitive and avoid stereotyping when reporting.

#### 4.4.18 Official national languages

While no quotas are prescribed, the Press must note that Seychelles has three official national languages. If any other language is used, except for songs and similar artistic work, it should be accompanied by a translation in one of the national languages.

#### 4.4.19 Elections

Once elections have been officially announced, the Electoral Commission is mandated with special powers concerning publications and broadcasts by law.

The Press shall abide by the provisions laid down by the Electoral Commission in its pursuit of free and fair elections and a responsible media landscape.

The Electoral Commission shall publish any special provisions and requirements so that the Press is fully aware of them.

#### 4.4.20 General definitions in the Code of Conduct

Key concepts often relating to the press and the media are:

- ▶ Freedom of expression:
  - ▶ Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This shall not prevent the State from requiring the licensing of publishing, broadcasting, television or cinema enterprises.
  - ▶ The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and independence of the courts or the National Assembly.
- ▶ The public interest:
  - ▶ detecting or exposing crime or a serious misdemeanour
  - ▶ protecting public health and safety
  - ▶ preventing the public from being misled by some statement or action of an individual or organisation.

Where the public interest is invoked, the editor will be required to explain and demonstrate how the public interest was served.

In cases involving children, editors must demonstrate an exceptional public interest to override the normally paramount interests of the child.

- ▶ Defamation:
  - ▶ Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally or which tends to make them shun or avoid that person. A statement is defamatory if it exposes a person to hatred, ridicule, contempt or disparages him in his office, profession or trade. A defamatory statement is libellous or slanderous.
  - ▶ Libels are generally written or printed but not necessarily; the defamatory matter may be conveyed in some other permanent form. For instance, a statue, a caricature, an effigy, chalk marks on a wall, songs, pictures or even a waxwork figure may constitute a libel.
  - ▶ Slander is defamation in a transient form, such as the spoken word.
  - ▶ Whether a person has been defamed is a matter to be determined by a court of law.

## **5 Media self-regulation**

The media in Seychelles currently lacks a self-regulatory body and is without self-regulatory mechanisms for dispute resolution.

It should be noted that the Seychelles Media Association, in consultation with the Seychelles Media Commission (SMC), is involved in developing the Code of Conduct for the Media in Seychelles (discussed immediately above) as provided for in section 13(2)(b) of the SMC Act.

However, the Seychelles Media Association plays no role in enforcing the provisions of the Code of Conduct for the Media in Seychelles.

## **6 Case law and the media**

In this section, you will learn about:

- ▷ common law
- ▷ legislation that was held to contravene the constitution



## 6.1 Definition of common law

The common law is judge-made. It is made up of judgments handed down in cases adjudicating on disputes brought by people, whether natural (individuals) or juristic (for example, companies or government departments). In common law legal systems such as in Seychelles, judges are bound by the decisions of higher courts and also by the rules of precedent, which require rules laid down by the court in previous cases to be followed unless they were wrongly decided. Legal rules and principles are, therefore, decided on an incremental, case-by-case basis.

In this section, we focus on two cases that were heard together, and a single judgment was drawn up due to their similarity and by agreement of counsel and all parties involved.

## 6.2 Legislation that was held to contravene the constitution

The Constitutional Court of Seychelles heard two cases concerning the constitutionality of certain provisions of the Public Order Act, Act 22 of 2013 (Public Order Act). The first was *The Seychelles National Party and Others vs The Government of Seychelles*, CC No 02/2014 heard on 14 March 2014, and the second was *Viral Dhanjee vs Mr James Alix Michel and others*, CC No 03/2014 heard on 27 March 2014. Due to the similar nature of both cases, the cases were heard together and a single judgment given with the agreement of all parties involved.

The Public Order Act signed into law by the president on 31 December 2013 sought to grant the Commissioner of Police certain powers to control public gatherings, public meetings and public processions to maintain law and order during non-emergency and non-war times.

Due to the broad nature of the judgment, we detail those parts of the judgment that are relevant to the media.

The Constitutional Court found that, in many instances, the Public Order Act contravened article 22, Freedom of Expression, and article 23, Freedom of Association, among other rights. The result was that many of the provisions of the Public Order Act were judged void by the Constitutional Court, including all of the provisions relevant to the media.

As a result of the judgment, the Registrar of the Supreme Court was ordered to transmit certified copies of the judgment to the president of the Republic and to the Speaker of the National Assembly under article 46(6) of the constitution. No order to costs was made.

## Notes

- 1 [https://www.worldometers.info/world-population/seychelles-population/#:~:text=Seychelles%202020%20population%20is%20estimated,\(and%20dependencies\)%20by%20population.](https://www.worldometers.info/world-population/seychelles-population/#:~:text=Seychelles%202020%20population%20is%20estimated,(and%20dependencies)%20by%20population.) [Last accessed on 5 December 2020].
- 2 <https://www.cia.gov/library/publications/the-world-factbook/geos/se.html> [Last accessed on 12 December 2020]
- 3 <https://www.britannica.com/place/Seychelles/History> [Last accessed on 5 December 2020].
- 4 <http://www.statehouse.gov.sc/the-president> [Last accessed on 5 December 2020].
- 5 <https://sustainabledevelopment.un.org/memberstates/seychelles#:~:text=Seychelles%20is%20currently%20ranked%2043rd,Development%20Index%20category%20in%202019.> [Last accessed on 12 December 2020]
- 6 <https://data.worldbank.org/country/seychelles> [Last accessed on 5 December 2020].
- 7 <https://sbc.sc/news/seychelles-ranks-3rd-in-africa-for-internet-penetration-is-pushing-for-more-connectivity/#:~:text=Currently%2C%20there%20are%20four%20internet,Fi%20access%20in%20public%20spaces.> [Last accessed on 5 December 2020].
- 8 [https://rsf.org/en/ranking\\_table](https://rsf.org/en/ranking_table) [Last accessed on 12 December 2020]
- 9 <https://rsf.org/en/seychelles> [Last accessed on 12 December 2020]