



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

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Committee against Torture

**Initial report submitted by Seychelles under
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Part one – General information

I. General Legal Framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

A. Constitutional, criminal and administrative provisions regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Constitutional Provisions

1. The Constitution of Seychelles (hereinafter referred to as “the Constitution”) provides that the Constitution is the supreme law of Seychelles and any other law found to be inconsistent with it is, to the extent of the inconsistency, void.

2. Part I of Chapter 3 of the Constitution contains the “Seychellois Charter of Fundamental Human Rights and Freedoms” (‘the Charter’). The Charter sets out in Articles 15 to 39 the various human rights and freedoms protected under it.

3. Article 16 of the Constitution provides for protection of the ‘Right to Dignity’. It states that *“Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment”*.

4. Some of the rights set out in the Charter are not absolute and may be subject to certain limitations, restrictions or derogations. These limitations, restrictions or derogations are specific to each such right or freedom and are set out in the Article conferring such right. This is however not the case, for the “Right to Dignity”, and there are no permitted derogations from this Article.

5. Articles 43 and 44 of the Constitution also permit restrictions from certain fundamental rights and freedoms in the Charter during a “*period of public emergency*”.¹ In this case, a law may provide for the taking of such measures as are strictly required to meet the exigencies of the situation (Article 43) and also laws in relation to a disciplinary force (Article 44). Both these Articles specifically exclude derogations from the “Right to Dignity” enshrined in Article 16 of the Constitution.

6. Part IV of Chapter 3 of the Constitution provides for remedies for contravention (whether by a law, an act or omission) of any of the rights and freedoms enshrined in the Charter.

Criminal Provisions

7. There are no provisions specifically prohibiting torture, cruel, inhuman or degrading treatment or punishment in the criminal laws of Seychelles. However, the Penal Code provides for offences which may constitute torture, cruel, inhuman or degrading treatment or punishment.²

Administrative Provisions

8. The Police have a duty to act in accordance with the Judges’ Rules when interrogating suspects and recording their statements. Failure to comply with these rules

¹ “Period of public emergency” is defined in Article 49 of the Constitution as “any period during which (a) Seychelles is at war; or (b) a declaration made under Article 41 is in force”. Under Article 41, the president may make a declaration of a state of emergency where the president has reason to believe that (a) a grave threat to national security or public order has arisen or is imminent; or (b) a grave civil emergency has arisen or is imminent.

² See Part II on Article 4 of the Convention.

render confessions given by accused parties involuntarily, inadmissible as evidence before courts of law.

B. International treaties dealing with torture and other cruel, inhuman or degrading treatment or punishment to which Seychelles is a party and their status

9. The Government of Seychelles is a party to other numerous international treaties that contain provisions regarding torture, cruel, inhuman or degrading treatment or punishment, including:

- International Covenant on Civil and Political Rights;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention on the Rights of the Child;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Convention on the Rights of Persons with Disabilities;
- Second Optional Protocol to ICCPR, concerning abolition of the death penalty;
- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949;
- Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949;
- Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949;
- Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949;
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977;
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

10. The Government of Seychelles is in the process of considering becoming a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. The provisions of international instruments are not directly enforceable by the Courts of Seychelles. Obligations under international agreements must be domesticated in order for them to be directly enforceable by the Courts.

12. Provisions of international instruments related to human rights are generally taken into account in the interpretation of provisions of the Constitution relating to human rights. In that respect, Article 48 of the Constitution provides that Chapter 3 of the Constitution is to be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms. It further provides that a court shall, when interpreting the provision of this Chapter, take judicial notice of: the international instruments containing these obligations; the reports and expression of views of bodies administering or enforcing these instruments; the reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms; and the Constitutions of other democratic States or nations and decisions of the courts of the States or nations in respect of their Constitutions.

C. Competent authorities with jurisdiction on matters dealt with in the Convention

Constitutional Court

13. Article 46 of the Constitution confers jurisdiction on the Constitutional Court³ to provide redress and compensation for contraventions (whether by a law, an act or omission) of any of the rights and freedoms enshrined in the Charter, on application made to it.

Supreme Court

14. The Supreme Court has original jurisdiction in civil and criminal matters by virtue of Article 125 (1) (b) of the Constitution. As such it may try civil and criminal matters relating to offences amounting to torture, cruel, inhuman or degrading treatment or punishment, including seeking damages as a result of any violations of civil rights.

15. Article 125 (1) (c) of the Constitution gives the Supreme Court supervisory jurisdiction over subordinate courts, tribunals or adjudicating authorities. This provision empowers the Supreme Court to administer administrative law remedies whereby an aggrieved person may challenge decisions of subordinate courts, tribunals or adjudicating authorities.

Magistrates' Courts

16. The Magistrates' Courts may try criminal offences amounting to torture, cruel, inhuman or degrading treatment or punishment falling within its jurisdiction. The jurisdiction of Magistrates' Courts with respect to criminal matters is limited in terms of the penalty which may be imposed by that Court.

17. Civil claims for damages suffered as a result of Act of torture which fall within the jurisdiction of the Magistrates' Courts (the jurisdiction of which, in respect of civil matters, is subject to monetary thresholds) may be heard by those courts.

Police Disciplinary Board

18. The Police Disciplinary Board was established under the Police Force Act (1959) and deals with any disciplinary offences committed within the Police Force. This includes offences such as assaulting or mistreating any suspects or persons under the custody of the Police.

19. The Police Force Act is currently being revised and expected to be in force by the end of 2018, which may also include revision of the Disciplinary Board.

Internal Affairs

20. Any complaint against any police officer is investigated by the Internal Affairs unit. If a member of the public or detainee claims to have been harmed by the Police, a report can be lodged to Internal Affairs. Any evidence gathered is then submitted to the Police Disciplinary Board.

21. Based on the recommendation of Internal Affairs, the Commissioner of Police will decide if the case has sufficient grounds to be sent to the Attorney General's Chambers for criminal prosecution. One such incident which occurred involved the rape of a detainee by a police officer. An investigation was conducted and the case was recommended to the Attorney General's Chambers as a serious offence. The police officer was subsequently prosecuted and convicted.

Prisons Service

22. The Prisons Act is the primary legislation regulating prison services in Seychelles and contains several provisions relating to treatment and welfare of prisoners which ensure

³ According to Article 129 of the Constitution, the Constitutional Court is constituted by not less than 2 Judges of the Supreme Court sitting together.

respect of human rights of such prisoners. The practical application of provisions of the Act is further defined in the Prison Regulations 2001. The Prison Regulations 2001 also contain a list of offences that may be committed by subordinate officers as well as the corresponding punishments for these offences.

23. The Prisons Act is currently being revised to allow for the legal establishment of a Prisons Disciplinary Board. The revised Act is expected to be in force by the end of 2018.

24. Presently, the Prisons Service operates under a Standard Operating Procedure (SOP) in any cases involving the alleged contravention of the Convention. It is the duty of the Chief Inspector (third in rank in the Prison Service) to inform the Superintendent of Prisons and the Police of any cases arising. This is then investigated jointly with the Police. The SOP is being proposed to be incorporated in the upcoming revised Prisons Act.

25. The proposed revised Act also makes provisions for the prisons to move from a punitive facility to a corrective and rehabilitation facility in line with a human rights based approach. There will also be provisions to have a complete legal separation of prisoners; that is for women, men and juveniles to be kept separate. The current Act already makes provisions for this separation; however, there are now discussions on keeping the prisoners in completely separate sites as well and to be classified in different sub-units of the different prisons, that is; low to medium risk, high risk and vulnerable prisoners units.

26. Section 36 of the Prisons Act provides for the establishment of the Prison's Advisory Board. The functions of the Board are to advise the Minister on matters relating to prison welfare; investigate complaints relating to prison welfare referred to it by the Minister; make recommendations for any remedial action in respect of complaints investigated by the Board.

27. The Advisory Board consists of independent persons who are external to the Government and the Prison Service. They conduct a series of visits and meetings at the prisons. Any recommendations for improvement of prisoner welfare are submitted by the Board directly to the Minister of Internal/Home Affairs who in turn acts on it through the Superintendent of Prison.

28. The President of the Republic has announced in June 2017 of the setting up of a High Level Committee on Prison Reform and Prison Rehabilitation, consisting of a wide range of stakeholders including members of the National Assembly, the Internal Affairs Minister, the Superintendent of Prison, Churches, Civil Society, amongst others. The Committee is chaired by the Vice President of the Republic. The Committee is aimed towards allowing a complete review and social reform programme of the prison system.

29. The Committee will involve the setting up of 5 sub-committees to focus on namely; legal and administrative issues of the prison, international cooperation, human resources, rehabilitation, infrastructure and security.

Military Courts

30. Under the Defence Forces (Offences) Act, members of the Seychelles People's Defence Force may be prosecuted before a court. Offences under that Act also includes offences under the Penal Code which are termed civil offences (except when such offences are determined by regulations to be disciplinary offences and dealt with by a disciplinary officer).

31. Disciplinary Offences committed by members of the Defence Force which may include offences which may constitute torture, cruel, inhuman or degrading treatment or punishment are dealt with by disciplinary officers. Such offences may also be offences under the Penal Code which are determined by regulations to be disciplinary offences.

32. It is also to be noted that under section 14 of the Defence Act which establishes the Seychelles People's Defence Forces, the Commander-In-Chief may set up a Board of Inquiry to investigate and report to him on "any matter connected with the government, discipline, administration or functions of the Defence Force, or a part of the Defence Force, or affecting any member of the Defence Force". The constitution, conduct of proceedings and powers of such a Board is as prescribed. The section also provides that "Regulations

may provide for the application to every or any Board of Inquiry of all or any of the provisions, with the necessary modifications, of the Commissions of Inquiry Act, as if it were a commission under that Act”.

Attorney General

33. The office of the Attorney General is provided for by Article 76 (1) of the Constitution. According to Article 76 (4) the Attorney General is the Principal Legal Adviser to the Government and has the power to: to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person; to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken under sub clause (a) or by any other person or authority.

34. As such the Attorney General is responsible for prosecution of offences under the Penal Code amounting to torture and cruel, inhuman or degrading treatment or punishment. The Attorney General also represents the Government in cases of breach of constitutional rights before the Constitutional Court as well as civil claims for damages resulting from breaches of such rights before the Supreme or Magistrates’ Courts.

Ombudsman

35. The office of the Ombudsman is provided for under Article 143 of the Constitution. Schedule 5 of the Constitution defines the functions and powers of the Ombudsman.

National Human Rights Commission

36. The National Human Rights Commission is established under the Protection of Human rights Act 2009. Under section 6 (1) of that Act, the Commission may “without prejudice to the jurisdiction of the Courts or the powers conferred on the Attorney-General or the President, or any public Authority: inquire into any written complaint from any person alleging violation of his human rights; visit any police station, prison or other place of detention under the control of the State to study the treatment afforded to and the living conditions of the inmates; review the safeguards provided by any enactment for the protection of human rights; recommend action to alleviate the factors or difficulties that inhibit the enjoyment of the human rights; and exercise functions considered to be conducive to the promotion and protection of human rights”.

37. The legislation governing the National Human Rights Commission is currently being revised in order to ensure that the institution is fully compliant to the Paris Principles.

Commissions of Inquiry

38. The Commissions of Inquiry Act, in section 2 (1), provides for the issuing of a Commission by the President appointing one or more Commissioners to enquire in:

- (a) The conduct of any officer in the public service;
- (b) The conduct or management of any department of the public service, or of any public or local institution;
- (c) Any matter relating to the public service;
- (d) Any matter of public interest or concern;
- (e) Any matter for which an inquiry would be for the public welfare.

39. The functions of such a Commission as described in section 8 of the Act are to “make a full, faithful and impartial inquiry into the matter specified in the Commission, and [to] conduct such inquiry in accordance with the directions (if any) in the Commission; and, in due course, [to] report to the President in writing the result of such inquiry; and also, when required, [to] furnish to the President a full statement of the proceedings of the Commission, and of the reasons leading to any conclusion arrived at or reported”.

40. Examples of Commissions of Inquiry which have been issued to inquire in cases of conduct of police officers include:

- The case of Mervyn Pierre, an incident which occurred on 26th July 2009, where an inmate died while in police custody. The inquiry was followed by two police officers being charged with manslaughter and negligent acts causing harm, with one of the accused police officers found guilty and convicted to 12 years' imprisonment for manslaughter;
- The case of Robert Banane, an incident which occurred on 18th March 2016, in which an inmate lost his life during the process of reasserting order in the Montagne Posee Prison after a riot broke out. The report from the inquiry was produced in April 2018. A committee has been set up to produce an action plan in regards to recommendations proposed in the report following the inquiry, including matters of liability of both the Prison Service and the Police Force whose assistance was sought during the riot;
- The case of Steve Khan, an incident which occurred in 2017, where an inmate was taken to the hospital by prison guards after found at the Montagne Posee Prison not to be feeling well. He died at the hospital. A Commission of inquiry is ongoing into the matter;
- The case of Kevin Bristol, an incident which occurred on 15th April 2018 in which an inmate, who was sentenced by the Family Tribunal for failure to pay alimony, was found dead by Prison Guards at the Montagne Posee Prison. One suspect, a fellow inmate, has been charged with murder, and the case is pending trial. An internal investigation is also being conducted.

Part two – Information in relation to articles in Part I of the Convention

Article 1

41. The term “torture” is not defined in the laws of Seychelles. The definition of torture in Article 1 of the Convention is not reproduced in any domestic legislation, however, any act falling within the Convention’s definition of torture is considered illegal and prosecutable in Seychelles.

42. In the case of *Ponnoo v. Attorney General* (2010), the Constitutional Court had to determine among other things, whether the imposition of a minimum mandatory sentence for the offence of breaking and entering into a building and committing a felony therein, contrary to Section 291 (a) as read with Section 27A (1) (c) (i) of the Penal Code of Seychelles violated the Petitioner’s right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment and hence whether the said minimum mandatory sentence contravened Article 16 of the Constitution. In coming to its determination the Court took into consideration the definition of torture under Article 1 of the Convention as well as the case law of the European Court of Human Rights relating to Article 3 of the European Convention on Human Rights which also prohibits torture and inhuman or degrading treatment or punishment.

Article 2

43. The Constitution, in Article 16, confers on all persons the right to dignity. It provides that “Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.” Article 45 of the Constitution makes provision for remedies for contravention of this right by the Constitutional Court. The Magistrates and Supreme Courts also have jurisdiction to hear and determine civil claims for damages by any person for breach of that person’s rights as well as to try offences under the Penal code amounting to acts of torture. In addition, all fundamental rights and freedoms provided for by the Constitution including the

right to dignity may also be investigated by the Ombudsman in conformity with the relevant provisions of the Constitution. The National Human Rights Commission is also empowered under the Protection of Human Rights Act to carry out enquiries into any written complaints of alleged violation of human rights.

44. Article 18 (1) of the Constitution confers on every person the Right to Liberty and Security of the Person. Article 18 (2) allows restrictions of that right “in accordance with fair procedures established by law” in cases of arrest and detention in specific circumstances enumerated in that provision.⁴ A person who is arrested or detained is also given certain rights under Article 18 (3), namely: the right to be informed at the time of arrest or detention or as soon as is reasonably practicable thereafter in, as far as is practicable, a language that the person understands of the reason for the arrest or detention; the right to remain silent; a right to be defended by a legal practitioner of the person’s choice; in the case of a minor, a right to communicate with the parent or guardian. Article 18 (4) gives effect to the abovementioned rights by providing that “A person who is arrested or detained shall be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter of the rights under clause (3)”.

45. Under Article 18 (5) “A person who is arrested or detained, if not released, shall be produced before a court within twenty-four hours of the arrest or detention or, having regard to the distance from the place of arrest or detention to the nearest court or the non-availability of a judge or magistrate, or force majeure, as soon as is reasonably practicable after the arrest or detention”.

46. Article 18 (7) further provides that “A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise:

- (a) Where the court is a magistrates’ court, the offence is one of treason or murder;
- (b) The seriousness of the offence;
- (c) There are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;
- (d) There is a necessity to keep the suspect in custody for the suspect’s protection or where the suspect is a minor, for the minor’s own welfare;
- (e) The suspect is serving a custodial sentence;
- (f) The suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence”.

47. In that respect the Criminal Procedure Code contains provisions on the manner of dealing with arrested persons and in particular on the release or further detention of such persons and duration of police custody. Sections 78 to 87 of the Criminal procedure Code contains provisions on arrest effected pursuant to a warrant. Section 85 provides that “The police officer or other person executing a warrant of arrest shall [...] without unnecessary delay, bring the person arrested before the court before which he is required by law to produce such person”.

48. Section 18 and 20 (1) of the Criminal Procedure Code provides for circumstances in which a person may be arrested without warrant. The manner of dealing with such persons and in particular their release or detention and duration of police custody is dealt with in section 20 (2) and (3), 23 and 24 of the Criminal Procedure Code.

49. Article 18 of the Constitution also contains provisions with respect to remedies for unlawful detention. Sub-article 8 provides that “A person who is detained has a right to take proceedings before the Supreme Court in order that Court may decide on the lawfulness of the detention and order the release of the person if the detention is not

⁴ Articles 18 (2) (a) to (f).

lawful”. Sub-article 10 provides that “A person unlawfully arrested or detained has a right to receive compensation from those that unlawfully arrested or detained that person, including the State.” In that respect section 352 (1) (b) of the Criminal Procedure Code provides that “The Supreme Court may whenever it thinks fit direct that any person illegally or improperly detained in public or private custody within [the limits of Seychelles] be set at liberty”.

50. The provisions of Article 18 coupled with the various sections of the Criminal Procedure Code referred to above provide safeguards which not only ensure that persons are not detained unfairly but also ensure the proper treatment of arrested persons and detainees which may include the prevention of acts of torture. In addition to these provisions other rules, administrative and other measures exist which are applicable to law enforcement agencies and institutions effecting arrests and involved in the detention of persons.

51. The interrogation and questioning of suspects in police custody and the admissibility of statements obtained from such suspects are governed by the Judges Rules. These are a set of guidelines laid down in 1912 by the Judges of the Kings Bench in England for the questioning of suspects by the police which is applicable to the Seychelles by virtue of section 12 of the Evidence Act. That section provides that “Except where it is otherwise provided in this Act or by special laws now in force in Seychelles or hereafter enacted, the English law of evidence for the time being shall prevail”. In the case of *Kim-Koon & Co. Ltd v. R (1969)*, the Court held as follows, “On questions relating to the admissibility of statements made to the Police by the accused persons which are not governed by statutory provisions, a Court must be guided, as in the High Court of Justice of England, by the Judges Rules. The law of evidence applicable to criminal cases in Seychelles is the English law of evidence in force on 15th October 1962. These Rules are administrative directions and have not the force of law. Failure to comply does not necessarily make a statement inadmissible, the governing considerations being whether a promise of favour, or any menace was made or undue terror used, to induce the prisoner to confess, and if so, whether the prisoner was induced by such promise, etc. to make the confession sought to be given in evidence”.

52. Section 18 of the Prisons Act provides for the appointment by the Minister of one or more Prison Welfare Officers. The function of a Prison Welfare Officer is to attend to the welfare of prisoners whilst in, and after their release from, a prison and to perform such other duties as may be assigned to him by the Minister. A Prison Welfare Officer may, with notice to the Superintendent, visit a prison and have access to every prisoner therein. The Superintendent of a prison is required to provide facilities for the performance of the duties of a Prison Welfare Officer.

53. The Prisons Act, in Section 17, also provides for every prison to have a Medical Officer of Prisons who shall be a government medical officer. This section provides that “The Medical Officer of Prisons shall be detailed for duty in the prison by the chief executive officer of the Ministry responsible for health in consultation with the chief executive officer of the Ministry responsible for prisons”. The functions of the Medical Officer of Prisons is to, subject to the control of the Superintendent, have the general care of health of the prisoners and to perform such other duties as may be prescribed. The Medical Officer of Prisons, while acting as such, has all the powers, authority, protection and privilege of a prison officer of a rank below that of the Superintendent.

54. The Prison Regulations 2001 also contain provisions which safeguard inmates against torture.

Article 3

55. The expulsion, return or extradition of a person to another State is dealt with mainly by the Extradition Act, 1991, the Transfer of Prisoners Act, 2010 and the Immigration Decree, 1981. While these Acts do not contain provisions explicitly prohibiting the expulsion, return or extradition of a person to a State where that person might be tortured,

there are certain provisions which might be used to that effect, particularly in the Extradition Act.

56. The Extradition Act 1991 contains procedures for the extradition of persons from Seychelles as well as provisions for extradition of persons from other countries to Seychelles. A person may be extradited from Seychelles either to a Commonwealth country or to any other foreign country where there is a treaty in force between the Seychelles and that foreign state for the extradition of fugitive offenders. However the application of the Act is limited to countries which the Minister has declared (by an order published in the Official Gazette) that the Extradition Act applies to.

57. Extradition is also subject to the condition that the person must be accused or convicted of an extraditable offence and that a request for extradition is made. In that respect, Section 5 of the Act provides that “... *a person found in the Republic*:

(a) Who is accused of an extraditable offence; or

(b) Who is alleged to be unlawfully at large after conviction of an extraditable offence, in a designated Commonwealth country or foreign state, may be arrested and returned to the designated Commonwealth country or foreign state by or on behalf of which the request for extradition was made”.

58. Section 4 of the Act defines an offence as an extraditable offence “if:

(a) It is an offence against the law of the Commonwealth country or foreign state which, however described in the law, falls within any description set out in the First Schedule and is punishable under the law of the Commonwealth country or foreign state, as the case may be, with death or imprisonment for a term of not less than twelve months; and

(b) The facts constituting the offence would constitute, in the Republic, an offence falling within any description set out in the First Schedule under a written law”.

59. Section 6 (1) of the Act provides for certain restrictions on extradition, namely:

(a) That the offence of which the person is accused or was convicted is an offence of a political character;

(b) That the request for extradition, though purporting to be made on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinion; or

(c) That he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinion”.

60. Article 25 of the Constitution also prevents extradition of persons to countries where the death penalty is in force. An individual cannot be extradited if the death sentence is to be applied in respect to the offence committed, unless the receiving country agrees to suspend the death penalty in that particular case.

61. Under the provisions of the Transfer of Prisoners Act, foreign nationals convicted in Seychelles may be transferred to their country of origin to serve their sentences.

62. The Immigration Decree, 1981, regulates the entry of persons into and departure of persons from Seychelles. It contains provisions relating among other matters, to prohibited immigrants and prescribes the procedure for requiring a person of that description to leave Seychelles. The Decree also provides for the deportation of persons from Seychelles including prohibited immigrants who have failed to leave Seychelles after having been required to do so under the provisions of the Act.

Article 4

63. A member of the Defence Forces may be prosecuted for an offence before the ordinary courts or before a Court Martial. Part A of the First Schedule to the Act provides for Serious Offences.

64. A civil offence is defined as an offence under any law other than the Defence Forces (Offences) Act. This means that offences under the Penal Code (including those that may constitute torture, cruel, inhumane or degrading treatment) may constitute civil offences. Paragraph 6 (1) provides that *“A person subject to this Act who commits a civil offence is guilty of an offence against this Act and is liable on conviction before a court-martial to incur the penalty, or a penalty not exceeding the penalty, prescribed in respect of the civil offence”*.

65. Part B of the First Schedule to the Act provides for the manner in which serious offences (including civil offences) are tried, that is, it contains provisions relating to proceedings before a Court Martial.

66. Part A of the Second Schedule to the Act contains Disciplinary Offences. Paragraph 1 (1) provides that *“A person subject to this Act who commits an act or omission that is:*

- (a) Prejudicial to good order and discipline; or
- (b) Unbecoming of a member of the Defence Force, is guilty of a disciplinary offence”.

67. Paragraph 1 (2) then goes on to list certain modes of conduct as disciplinary offences. Some of these may amount to torture. These are namely –to strike or use, or threaten by words, actions or otherwise to use, violence to another member of the Defence Force on duty; to ill-treat in any way a member of the Defence Force on duty and of inferior rank; to offer, in the course of duty, inhumane or degrading treatment to another person; a civil offence dealt with as a disciplinary offence under paragraph 6 (4) of Part A of the First Schedule.

68. Paragraph 1 (3) also provides that *“A person subject to this Act who:*

- (a) Has helped or encouraged another person to commit a disciplinary offence; or
- (b) Tries to conceal a disciplinary offence; or
- (c) Is otherwise an accessory to the commission of a disciplinary offence; or
- (d) Attempts to commit a disciplinary offence, is liable to be treated as if he had committed the disciplinary offence”.

69. Penalties for disciplinary offences under the Act are provided for in paragraph 2 (1) of Part A of the Second Schedule which provides that *“Subject to this Act, all or any of the following punishments, which are listed in descending order of severity, may be imposed in accordance with this Act in respect of a disciplinary offence”*. These penalties are:

- (a) Dismissal with previous detention in accordance with item (d) i.e. detention for a period not exceeding 180 days;
- (b) Dismissal without detention;
- (c) Reduction in rank, with or without detention;
- (d) Detention for a period not exceeding 180 days;
- (e) Forfeiture of service for the purposes of promotion;
- (f) Confinement to barracks for a period not exceeding 180 days;
- (g) A fine not exceeding three month’s salary;
- (h) Stoppage of not more than 21 days leave;
- (i) Extra duties in accordance with Regulations or with orders by the Commander-in-Chief; or
- (j) Reprimand.

70. Paragraph 2 (2) of Part A of the Second Schedule subjects certain punishments for disciplinary offences to confirmation by the Defence Council. These are — dismissal; reduction in rank; detention for a period exceeding 14 days; forfeiture of service;

confinement to barracks for a period exceeding 21 days; a fine exceeding one week's salary or stoppage of more than 7 days leave.

71. Paragraph 2 (4) of Part A of the Second Schedule further provides that "A sentence of detention shall be served in such place and under such conditions as the Commander-in-Chief may order or as may be prescribed".

72. The Act makes provision under section 16 (1) for investigation without unnecessary delay of allegations of offences against the Act. However subsection (2) of that section provides that "*The Commander-in-Chief, in relation to a serious offence, or a disciplinary officer, in relation to a disciplinary offence in respect of which he would have jurisdiction, may in writing order that an allegation that such an offence has been committed shall not be investigated or that an investigation which has been commenced shall not be continued. Where an order that an alleged offence is not investigated is made is made by a disciplinary officer, he must forthwith give in writing particulars of the order to the Commander-in-Chief or to a member of the Defence Force designated by the Commander-in-Chief.*"

73. The Act also gives a time limit for commencing proceedings. It provides in section 19 (1) that "A person shall not be tried for:

(a) *A serious offence (other than an offence under paragraph 2, 3, or 6 of Part A of the First Schedule) unless the trial begins within 3 years after the commission of the offence;*

(b) *An offence under paragraph 6 of Part A of the First Schedule, unless the trial begins within the period prescribed for bringing proceedings in a court in respect of the similar civil offence under the other law concerned; or*

(c) *A disciplinary offence unless disciplinary proceedings are commenced within 12 months after the commission of the offence".*

74. Under Section 19 (2) "A person may be tried at any time for an offence under paragraph 2 or 3 of Part A of the First Schedule".

75. Part V of the Police Force Act, Cap 172, contains provision with respect to discipline. Section 35 provides that "Any subordinate officer who shall be guilty of an offence against discipline shall be liable to such punishment as is hereinafter provided". "Subordinate officer" is defined in section 2 of that Act as "any police officer below the rank of Assistant Superintendent". Section 35 (2) of that Act provides that offences against discipline are to be prescribed by regulations made by the President. These are the Police Force (Offences against Discipline) Regulations 1966/7.

76. According to section 36 (1), charges and complaints made against a subordinate officer for the commission of an offence against discipline are heard and determined by the Commissioner of Police or any police officer of or above the rank of inspector authorised by the Commissioner of Police so to do.

77. In terms of section 35 (1), any subordinate officer who is found guilty of an offence against discipline is liable to the following punishment provided under section 36 (1):

(a) Reprimand or severe reprimand;

(b) Reduction in rank, seniority or grade;

(c) A fine not exceeding half a month's salary;

(d) Dismissal from the Force, with or without forfeiture of all pay due;

(e) In the case of a constable, confinements in barracks for a period not exceeding 14 days or extra duty not exceeding 3 hours per day up to a maximum of 5 days;

(f) A combination of all or any of the punishments specified in paragraphs (a), (b), (c) and (e).

78. Section 36 (1) contains a proviso that any punishment awarded under paragraph (d), (i.e. dismissal from the Force, with or without forfeiture of all pay due) shall not take effect until confirmed by the President. Section 36 (2) makes provision for suspension of

sentences. It provides that “Where any punishment is awarded to a subordinate officer in respect of an offence against discipline it may be ordered that such punishment be suspended for a period not exceeding six months and if during such period of suspension the offender commits no further offence against discipline, the punishment shall be remitted. Where any punishment has been suspended, and the offender is found guilty during the period of suspension, of any further offence against discipline, the suspended punishment shall forthwith be carried into effect”.

79. Appeals against a decision made with respect to a charge or complaint for the commission of a disciplinary offence may be made to the Commissioner of Police (where the matter was heard by an officer other than the Commissioner of Police) or to the President (where the matter was heard by the Commissioner of Police).⁵ Under section 39, the Commissioner of Police has the power, without any appeal having been lodged, to reduce or vary any punishment imposed on a member of the Force by an officer empowered to try offences. However the punishment may not be varied in any way which would render it more severe than the original punishment unless the offender has been given an opportunity of being heard.

80. A member of the Police Force may also be dealt with before the ordinary Courts. Section 40 (1) of the Act provides that “where it appears to the Commissioner of Police that an offence against discipline, by reason of its gravity or by reason of previous offences against discipline by the police officer charged or for any other reason, cannot be adequately punished by the imposition of any of the punishments prescribed in section 36, the Commissioner of Police may, by order in writing require the police officer charged to be taken before a court to be dealt with under subsection (2)”.

81. Subsection (2) of section 40 provides for imprisonment for a term not exceeding six months or to a fine not exceeding three months’ pay, or to both such imprisonment and fine for a police officer taken before a court, if found guilty of the offence of which that officer is charged. Sub section (3) of section 40 further provides that “the Commissioner of Police may reduce in rank, seniority or grade any police officer who has been convicted of any offence against discipline dealt with under subsection (2) of this section”. It is however specified that this is without prejudice to the exercise of the powers of the Commissioner of Police under paragraph (c) of subsection (1) of section 18. This provision gives the Commissioner of Police power to discharge at any time, any subordinate officer, subject to the approval of the President, upon conviction for any offence and sentence in respect thereof to imprisonment without the option of a fine or on conviction for an offence involving fraud, dishonesty, or moral turpitude. Under section 45 “No pay shall accrue to any police officer in respect of any period during which he is undergoing any sentence of imprisonment: Provided that in any case the Commissioner of Police may in his discretion authorize the payment of such proportion of the officer’s pay, not being more than one half, as he may think fit”.

82. Section 19 contains provisions with respect to measures taken against a police officer during investigations of alleged offences. Subsection (1) of that section provides that “When any police officer is accused of any offence against any law or against this Act, the Commissioner of Police may interdict such officer from the exercise of the powers, functions and duties vested in him as a police officer, pending the result of the proceedings taken against such officer”. Under subsection (2) of that section, “A police officer who has been interdicted shall be allowed to receive such portion of his pay, not being less than one half, as the President shall think fit. If the proceedings against such officer do not result in his dismissal or other punishment, such officer shall be entitled to the full amount of the pay which he would have received if he had not been interdicted”.

Article 5

83. By virtue of various legislative provisions, the Seychelles Courts have jurisdiction to try all offences (including offences constituting torture) which are committed in any

⁵ Section 38 of the Police Force Act.

territory under Seychelles' jurisdiction. The Seychelles Courts have jurisdiction over such offences whether the offender or victim is a Seychellois national or not. This jurisdiction also extends to vessels and aircrafts registered in Seychelles.

84. Sections 6 and 7 of the Penal Code contain provisions on the territorial application of that Code. Section 6 provides that *"The Jurisdiction of the courts of Seychelles for the purpose of this Code extends to every place within Seychelles and over place over which the Republic has jurisdiction"*. It also provides that *"When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction"*.

Article 6

85. Where an offence amounting to torture has been committed in a place over which Seychelles has jurisdiction and the suspect is in the territory of Seychelles, the normal laws of Seychelles with respect to investigations, arrest and detention will apply irrespective of whether the suspect is a citizen of another country or not. The suspect will be apprehended and may or may not be remanded depending on the facts of the case. Depending on the outcome of the investigation, the suspect may then be charged. Where the suspect is a citizen of a foreign country, the embassy of that country is normally informed.

86. In the case where a person alleged to have committed an offence in a place where Seychelles has no jurisdiction but the person is presently in Seychelles, the person may be extradited under the provisions of the Extradition Act.

Article 7

87. Article 19 (1) of the Constitution confers on all persons charged with an offence, the right to a fair hearing within a reasonable time by an independent and impartial court established by law. The manner of giving effect to that right is provided for in Article 19 (2) which provides that every person who is charged with an offence has the right to be presumed innocence until proven guilty and the right to be defended before the court in person, or, at the person's own expense by a legal practitioner of the person's own choice, or, where a law so provides, by a legal practitioner provided at public expense.

88. Under Article 27, *"Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society"*.

Article 8

89. Details regarding the extradition processes of the Government of Seychelles are provided above under 'Article 3' of the present report.

Article 9

90. The provisions of Article 9 of the Convention are covered by the Mutual Assistance in Criminal Matters Act, 1995. Under that Act, the Government of Seychelles may provide or obtain mutual assistance in criminal matters in relation to an offence committed or believed to have been committed. The assistance may be in the form of production of evidence, documents, amongst others.

91. Mutual assistance may be provided to or obtained from certain countries to which the Act applies. Under section 4, the Act applies to all Commonwealth countries and foreign countries (other than a Commonwealth country) where there is a treaty for bilateral mutual assistance in criminal matters between Seychelles and that foreign country or for the

purpose of giving effect to an international treaty of which Seychelles and the foreign country are parties, any other foreign country specified by regulations.

92. The Government of Seychelles may provide or obtain mutual legal assistance in criminal matters by means of cooperation other than those provided for under the Act. In that respect section 3 provides that *“Nothing in this Act prevents the provision or the obtaining of mutual assistance in criminal matters otherwise than as provided in this Act or otherwise than pursuant to other forms of co-operation between Seychelles and a foreign country, jurisdiction or organisation”*.

Article 10

93. The Seychelles Police Academy (SPA) provides training for members of the Seychelles Police Force who attend a full time course before starting their duties. New recruits to the force follow an Advanced Certificate course which contains one module on Basic Approaches to Human Rights. This module includes legal sources of human rights in Seychelles with particular emphasis on Constitutional provisions, International Human Rights Instruments and institutions mandated with safeguarding human rights. The module also covers the role of police officers with regard to respect of human rights particularly rights of arrested and detained person (including rights of minors and women) and their treatment, interrogation, care and custody. The training also covers legal and administrative procedures and rules which should be followed by police officers such as the procedures under the Criminal Procedure Code and the Judges Rules.

94. Training of the Seychelles People’s Defence Forces are provided by the Seychelles Defence Academy.

95. A Training of Trainers programme is conducted periodically with prison officers on how to handle and interact with inmates using a human rights based approach.

Article 11

96. Constitutional and other legislative provisions exist to ensure the proper treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment. In that respect Article 18 (Right to Liberty and Security of the person) provides a person who is arrested and detained with certain rights.

97. The interrogation of suspects by the police is subject to the provisions of the Constitution, and also regulated by the Judges Rules. These basically sets out certain procedures to ensure that statements given by a suspect is given voluntarily. Confessions which are obtained in violation of these rules are inadmissible as evidence in Court. Law enforcement officers are instructed in this regard, and informed accordingly of the consequences of their failure to follow these procedures.

98. The domestic law and practice of Seychelles does to a certain degree contain the rules and principles which are reflected in the following UN documents, that is:

- The Standard Minimum Rules for the Treatment of Prisoners;
- The Basic Principles for the Treatment of Prisoners;
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Code of Conduct for Law Enforcement Officials.

99. The National Human Rights Commission is empowered under section 6 (1) (b) of the Protection of Human Rights Act to “visit any police station, prison or other place of detention under the control of the state to study the living conditions of the inmates and the

treatment afforded to them”. In 2009 three rioting incidents (6th, 11th and 15th March 2009) occurred at the Montagne Posee Prison. The Commission carried out an investigation in the incidents and prepared a report.

100. Non-Governmental Organizations may be allowed access to Prisons. The Red Cross is also allowed access to prisons.

101. The establishment of prisons is provided for under section 3 (1) of the Prisons Act. It provides that *“There shall be prisons established in Seychelles for the confinement of prisoners under this Act.”* Subsection (2) of that section provides that *“For the purposes of subsection (1), the President may, by order published in the Gazette, declare any place in Seychelles to be a prison”*. Part V of the Prison’s Act contains provisions with respect to Special Prisons. Section 35 of that Act provides for the establishment of such prisons as follows *“Where the President is of opinion that in the interest of security and public safety, special prisons be established for the confinement of prisoners, the President may, by order published in the Gazette, declare any place in Seychelles to be a special prison”*.

102. Other than prisons, persons may also be detained at police stations and remand centers.

Article 12

103. Investigation of acts of torture may be carried out by various competent Authorities, with a thorough, prompt, and impartial investigation within their jurisdiction, as have been provided at other points of the present report.

Article 13

104. A person who claims to have been a victim of acts of torture or other cruel, inhuman or degrading treatment or punishment may report the matter to the competent authorities which may carry out investigations of the complaint. Depending on the results of these investigations, different options are open to the victim. Where the police for example have sufficient evidence of an illegal act constituting torture the perpetrator may be charged with the offence before a court of Competent jurisdiction.

105. In addition, the victim of torture may obtain redress before the Constitutional Court for breach of that person’s constitutional right in accordance with Article 46 of the Constitution. Redress may also be obtained before the ordinary courts by way of a civil claim for damages. Recourse to the Courts is particularly useful where the competent authorities refuse to investigate the case or the victim is not satisfied with their determination.

106. The Courts have a number of mechanisms at their disposal for the protection of the complainants and the witnesses against intimidation or ill-treatment. In particular, the Courts may issue a restraining order against a person or organization for the benefit of a victim of or witnesses in a case of torture. The Courts may also issue a writ of Habeus Corpus which may also be used to complain about unconstitutional conditions of confinement or illegal detention.

107. The Courts hearing a criminal offence may also remand the person charged until final disposal of the case under Article 18 of the Constitution. Sub-article 7 of that Article provides that the Court may do so where *“there are substantial grounds for believing that the suspect will ... interfere with the witnesses or will otherwise obstruct the course of justice”*.

Article 14

108. Certain offences under the Penal Code may be carried out in the commission of an act of torture, cruel, inhumane or degrading treatment. A person subjected to torture and ill-treatment has a legal right to redress, and an enforceable legal right to fair and adequate

compensation from the offender. A victim may pursue several possible avenues of redress depending on the specific circumstances. Section 25 (c) of the Penal Code includes compensation as one of the punishments which may be inflicted by a Court. In addition section 30 provides that *“Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be either in addition to or in substitution for any other punishment”*.

109. Where a case is filed before the Constitutional Court for breach of a person’s constitutional right, Article 45 (5) (d) of the Constitution gives the Court the power to *“award any damages for the purpose of compensating the person concerned for any damages suffered”*.

110. Where redress is sought by means of a civil claim for damages before the Supreme Court by a victim of torture, damages will be paid to plaintiffs in whose favour judgement is given. Such a claim may also be brought by the dependants of a victim in the event of the death of that victim as a result of such torture.

111. Civil Claims against the police and defence personnel are brought against the Government which is legally responsible for the offender’s conduct and, therefore, obliged to compensate the victim.

Article 15

112. The Courts of Seychelles have long established that involuntary statements such as those obtained as a result of ill treatment are inadmissible against the person who made the statement as proof of the contents of such statement. Such statements may however be used against a person accused of torture as evidence that the statement was made.

113. Furthermore, as a matter of Constitutional Privilege, Article 19 of the Constitution provides that no one can be compelled in a criminal case to be a witness against him or herself. The Constitution also recognizes the right to remain silent, permitting an individual to refuse to answer during an investigation or trial.
