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## INTRODUCTION

Seychelles introduced a new Constitution in 1993 to govern the transition from a one-party to a multi-party system of government. The Constitution sets out a number of provisions which deal with elections and contains a transitional regime under which the first multi-party elections were held.

The constitutional provisions dealing with elections generally will be presented herein first and then the transitional arrangements which governed the organisation and conduct of the first multi-party Presidential and National Assembly elections.

The principal instrument which dealt with the election organisation was the Constitution of the Republic of Seychelles (First Presidential Election and First Assembly Election) Regulations 1993 (referred to herein as “the Regulations”). The Regulations were made under the Constitution by the Director of Elections in lieu of an Act of Parliament in the circumstance, as a transitional measure.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Right to Vote

A citizen of Seychelles who is registered as a voter in an electoral area shall be entitled to vote, in accordance with the law, in the electoral area:

- (a) at an election for the office of the President;
- (b) at an election of the members of the National Assembly; or
- (c) in a referendum held under the Constitution,

unless any circumstances have arisen which, if the citizen were not so registered, would cause the citizen to be disqualified under an Act made under the Constitution.<sup>1</sup>

##### 1.02 Qualification for Registration as a Voter

A person who is a citizen of Seychelles and has attained the age of eighteen years is entitled to be registered as a voter unless the person is disqualified from registration under an Act on the ground of:

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

Any such Act may provide for different grounds of disqualification with regard to:

- (a) an election for the office of President;
- (b) an election of the members of the National Assembly; and
- (c) a referendum held under the Constitution.

A person is not entitled to be registered as a voter in more than one electoral area.<sup>2</sup>

### **1.03 Electoral Commissioner**

There shall be an Electoral Commissioner who shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority for a term of office of not more than seven years.

A person is qualified to be appointed as the Electoral Commissioner if:

- (a) the person is qualified to be registered as a voter and is a person of proven integrity and high repute; and
- (b) the person is not a candidate in an election or is not the President, a Minister or a member of the National Assembly.

Subject to the Constitution, the Electoral Commissioner shall not be subject to the direction or control of any person or authority in the performance of the functions of the Commissioner.

The Electoral Commissioner shall be paid such salary, allowances and gratuity as may be prescribed by an Act and the salary, allowances or gratuity so payable shall be a charge on the Consolidated Fund.

Subject to removal from office, the terms and conditions on which a person has been appointed Electoral Commissioner shall not be altered to the disadvantage of the person after the appointment.

The Electoral Commissioner shall at the end of the term of office, vacate the office and is eligible for reappointment.<sup>3</sup>

### **1.04 Functions of Electoral Commissioner**

The Electoral Commissioner shall:

- (a) be responsible for the conduct and supervision of the registration of voters and of elections and referenda;
- (b) keep under continuous review the number and boundaries of the electoral areas into which Mahé and Praslin are divided;
- (c) keep under continuous review the practices and working, including such matters as finance, broadcast and advertising, of political campaigns in respect of elections and referenda;

(d) have such other functions as may be prescribed by or under the Constitution or an Act.

The Electoral Commissioner shall, within ninety days after each election or referendum submit to the National Assembly and the President a report on the conduct of:

- (a) the political campaign leading up to the election or referendum; and
- (b) the election or referendum,

together with such recommendations as the Commissioner may consider necessary for the purposes of ensuring true, fair and effective elections and referenda.

The Electoral Commissioner shall, not later than three years after the coming into force of the Constitution and thereafter three years after the Commissioner last submitted a report relating to the review of the boundaries of electoral areas in Mahé and Praslin, submit to the National Assembly and the President such a report together with such recommendations regarding changes in the number or boundaries of the electoral areas on Mahé and Praslin which the Commissioner considers necessary in the circumstances.

As soon as is practicable within thirty days after the submission of the said report, the President shall cause to be laid before the National Assembly the draft of an order by the President for giving effect to the recommendations contained in the report relating to changes in the number or boundaries of the electoral areas referred to in the report and the draft may make provision for any matter which appears to the President to be incidental to or consequential upon the other provisions of the draft.

When the draft order laid before the National Assembly is approved by resolution of the National Assembly, the President shall make an order, which shall be published in the Gazette, in terms of the draft and the order shall come into force on the next dissolution of the National Assembly after the order is so published.

Where the draft order laid before the National Assembly is not approved by resolution of the National Assembly, the President shall refer the matter to the Electoral Commissioner for its reconsideration.<sup>4</sup>

### **1.05 Role of Director of Elections**

For the purposes of the transitional arrangements “Director of Elections” was defined to mean the person holding office as Chairman of the Constitutional Commission immediately before the date of coming into force of the Constitution.

The Director of Elections shall, by notice in the Gazette, appoint the date or dates, which shall be or, as the case may be, the first of which shall be not later than five weeks after the date of coming into force of the Constitution, on which the first Presidential election and the first Assembly election shall be held.

Subject to Schedule 7 of the Constitution (the transitional arrangements), the Director of Elections may make regulations with respect to the holding and conduct of the first Presidential election and the first Assembly election.

The Director of Elections shall supervise and shall have general responsibility for the conduct of the first Presidential election and the first Assembly election.

The Director of Elections shall for the purpose of conducting the first Presidential election and the first Assembly election, appoint a Chief Registration Officer and a Chief Electoral Officer and such number of registration officers, electoral officers, assistant registration officers and assistant electoral officers as the Director thinks fit.

In the exercise of the functions of the Director of Elections, the Director of Elections shall not be subject to the direction or control of any person or authority.

The Director of Elections shall discharge the functions of the Electoral Commissioner in respect of the matters which may be prescribed by an Act and may, for this purpose make regulations in respect thereof for the purposes of the first Presidential election and first Assembly election.<sup>5</sup>

### **1.06 Electoral Areas**

Seychelles shall be divided into as many electoral areas, as may be prescribed, for the purposes of election of members to the National Assembly and each electoral area shall be represented by one member of the National Assembly.

There shall be not less than nineteen electoral areas on Mahé and two electoral areas on Praslin and the Inner Islands shall constitute one electoral area.

In determining the number and boundaries of the electoral areas on Mahé and Praslin the Electoral Commissioner:

- (a) shall have regard to:
  - (i) the boundaries of the electoral areas which exist at the time of the determination by the Commissioner; and
  - (ii) the natural geographical features of Seychelles;
- (b) shall ensure that, each electoral area on Mahé shall have, as nearly as is practicable, an equal number of inhabitants and each electoral area on Praslin shall have, as nearly as is practicable, an equal number of inhabitants;
- (c) shall, for the purposes of the application of article 78(b) of the Constitution, ensure that the total number of electoral areas is, as far as is practicable, a multiple of two.<sup>6</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 General Remarks**

This and subsequent sections in the presentation refer to the arrangements for the first Presidential election and first Assembly election of 1993. The role of the Director of

Elections set out in Schedule 7 of the Constitution (hereinafter referred to as “the Schedule”) and discussed above was pivotal in the administration for those elections.

## **2.02 Registration Officers**

Subject to paragraph 11 of the Schedule, the Chief Registration Officer appointed under that paragraph shall be responsible for the amendment of the existing registers of voters and may give directions, not inconsistent with the Schedule, to any person exercising a function in connection with the amendment of the existing registers of voters and the person shall comply with those directions.

A registration officer appointed shall assist the Chief Registration Officer in all matters relating to the amendment of the existing registers of voters for the electoral area for which the registration officer has been appointed.

The Chief Registration Officer, a registration officer and an assistant registration officer may demand from any person any information necessary for the amendment of the existing registers of voters.

There shall be at least one registration officer for each electoral area but the Director may appoint a registration officer for more than one electoral area.<sup>7</sup>

## **2.03 Electoral Officers**

Subject to paragraph 11 of the Schedule, the Chief Electoral Officer appointed under that paragraph shall be responsible for the supervision and conduct of the first Presidential election and the first Assembly election and may give directions, not inconsistent with the Schedule, to any person exercising a function in connection with the conduct of those elections and the person shall comply with those directions.

An electoral officer shall have supervision over all matters relating to the conduct of the first Presidential election and the first Assembly election in the electoral area for which the person has been appointed.

The Chief Electoral Officer, an electoral officer or an assistant electoral officer may demand from any person any information necessary to ascertain whether the person is entitled to vote at the first Presidential election and the first Assembly election.

There shall be at least one electoral officer for each electoral area.<sup>8</sup>

## **— Section 3 —**

### **REGISTRATION OF VOTERS**

The Chief Registration Officer may amend the existing registers of voters for the purposes of:

- (a) removing any obsolete entries;
- (b) correcting any mistake in respect of the name and other particulars of a registered voter;
- (c) where a registered voter has since the referendum changed the residence to another electoral area, registering the voter in the existing register of voters of that electoral area;

- (d) registering any voter who has, since the referendum, become qualified to be registered as a voter; or
- (e) deleting the name and other particulars of any person not qualified to be entered as a registered voter.

The Chief Registration Officer shall, before amending the existing registers of voters, publish, within eight days of the publication of a notice by the Director in the Gazette, a notice in a local newspaper and such other news media as the Chief Registration Officer deems appropriate inviting persons:

- (a) to inspect the amendments the Chief Registration Officer intends to make to the existing register of voters; and
- (b) to lodge any objections thereto in such form as may be provided by the Director, such place and within such time, not being later than five days of the publication of the notice under this sub-regulation, as may be specified in that notice.

The Chief Registration Officer shall ensure that there be present, at the place where and the time when the amendments to the existing registers of voters are inspected, a registration officer or an assistant registration officer for the purpose of receiving any objection.

The Chief Registration Officer, after giving the person who has lodged an objection not less than three days notice, shall, within five days after receiving an objection, hear the person and, after considering such other evidence as the Chief Registration Officer thinks relevant and necessary and after consulting the Director, uphold or reject the objection and the Chief Registration Officer shall, immediately notify the person of the decision and, where the objection has been rejected, give reasons for the rejection in writing.

The Chief Registration Officer shall after all objections made have been concluded, amend the existing registers accordingly and certify the register of voters for each electoral area for the purposes of the first Presidential election and first Assembly election.

Where the Chief Registration Officer is of the opinion that an objection is frivolous or vexatious, the person lodging the objection may be required to deposit a stipulated sum of money, with objection and where the objection is rejected, the deposit shall be forfeited to the Republic.<sup>9</sup>

## — Section 4 —

### NOMINATION OF CANDIDATES

#### **4.01 Nomination Day**

The Director shall, at least twenty-one days before the earliest date fixed for the elections, hereafter referred to as the “election day”, by notice published in the Gazette appoint the date, place and time for the nomination of candidates for the elections and shall in the notice specify:

- 
- (a) the sum required to be deposited or secured with the Director by each candidate for the elections; and
  - (b) the number of persons required to endorse the nomination paper of each such candidate.

The Director may appoint the same place or different places for nomination of candidates for elections.<sup>10</sup>

#### **4.02 Requirements for Nomination**

Every candidate for the elections shall be nominated by means of a nomination paper provided for the purpose by the Director.

The nomination paper shall be submitted by the candidate on the nomination day at the time and place appointed in the notice published as required:

- (a) in the case of the first Presidential election, to the Director; and
- (b) in the case of the first Assembly election, to the electoral officer appointed for the electoral area for which the candidate proposes to stand for election.

The nomination paper submitted by each candidate for the elections shall be signed by the candidate and:

- (a) in the case of the first Presidential election, shall be endorsed to the satisfaction of the Director by such number of persons entitled to vote at that election as is specified in the Regulations; and
- (b) in the case of the first Assembly election, shall be endorsed to the satisfaction of the electoral officer by such number of persons, specified by the Director in the notice which set the date for nomination, entitled to vote at that election in the electoral area for which the candidate stands for election.

Each nomination paper shall be accompanied by:

- (a) a certificate issued by the Director certifying the deposit of or securing of the sum specified in the notice;
- (b) such number of photographs of the candidate in such form and of such size as the Director may specify in the nomination paper provided by the Director; and
- (c) a symbol or a colour to identify the party or the candidate or, if he is an independent candidate, the candidate.

Any nomination paper submitted after the expiration of the time specified shall be rejected.

After the expiration of the time specified for submission of nominations:

- (a) in the case of the first Presidential election, the Director; and
- (b) in the case of the first Assembly election, the electoral officer of the electoral area, for which the candidate stands for election,

shall, as soon as is practicable thereafter, determine whether to accept or reject the nomination of a candidate.

A candidate may object to the acceptance of a nomination paper of any other candidate on the grounds that the other candidate is not qualified to stand for the first Presidential election or, as the case may be, the first Assembly election, or that the nomination paper does not comply with the Regulations.

The Director or, as the case may be, the electoral officer shall consider the objections and determine whether to accept or reject the nomination paper.

The determination made by the Director or, as the case may be, the electoral officer shall be final.<sup>11</sup>

#### **4.03 Withdrawal of Candidates**

A candidate for the elections may withdraw the nomination at any time by notice in writing to the Director and shall, where the candidate withdraws the nomination at least seven days before the election day, be refunded the deposit or returned the security for the deposit.<sup>12</sup>

### **— Section 5 —**

## **PREPARATION FOR POLLING**

#### **5.01 Names of Candidates and Polling Station**

The Chief Electoral Officer shall at least fifteen days before election day by notice published in the Gazette and a local newspaper specify:

- (a) the address of the polling station for each electoral area;
- (b) the time when voting may commence and the time of closing of the poll;
- (c) the name of each candidate separately for the first Presidential election and separately for the first Assembly election, as the case may be, the name of the registered political party of which the candidate is a member or the fact that the candidate is an independent candidate and the symbol or the colour, as the case may be.

The electoral officer of an electoral area shall allow a voter of that electoral area who at the time specified for the closing of the poll in the notice published:

- (a) is inside the polling station; or
- (b) in the opinion of the electoral officer, was in the immediate precincts of the polling station at that time and was prevented from entering the polling station because of congestion therein,

to vote at elections before closing the poll.<sup>13</sup>

## 5.02 Polling Agents and Counting Agents

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

The candidate shall not later than seven days before the election day notify in writing the Chief Electoral Officer the name, national identity number and address of the polling agent and counting agent of the candidate.

The Chief Electoral Officer shall as soon as is practicable before the election day issue a polling agent and a counting agent with a certificate and:

- (a) an electoral officer shall not allow a person to attend at a polling station as a polling agent;
- (b) the Chief Electoral Officer or the electoral officer, as the case may be, shall not allow a person to attend at counting of votes as a counting agent, unless the person holds the certificate issued by the Chief Electoral Officer.

Where the polling agent or counting agent of a candidate dies or becomes incapable of performing the functions as polling agent or counting agent before the election day the candidate shall forthwith appoint another person as polling agent or counting agent, as the case may be, and shall notify the Chief Electoral Officer in writing of the change and the reasons therefor and the Chief Electoral Officer shall issue a certificate to the person so appointed.

A polling agent shall, as far as is practicable, be so posted at a polling station so as to be able to see each person who applies to vote, hear the name of that person being called, see the ballot paper being handed and see the entrance of the compartment used by the voter for the purpose of recording the vote but so that the polling agent cannot see how the voter votes.

A candidate may appoint more than one person as the polling agent but not more than one of such persons shall at any one time be posted at a polling station as the polling agent of the candidate.

A candidate may appoint the same person as the polling agent and counting agent and a person appointed as polling agent for a candidate nominated by a registered political party for the first Presidential election may be appointed as the polling agent for a candidate of the same political party for the first Assembly election at the same polling station.<sup>14</sup>

## 5.03 Arrangement at Polling Station

A polling station shall be furnished with:

- (a) such number of compartments as the electoral officer of that polling station thinks necessary for the purpose of allowing voters to record their votes screened from observation;

- (b) sufficient number of ballot boxes for the elections;
- (c) notices, both inside and outside the station, containing instructions relating to the voting to be followed at the elections;
- (d) notices showing the name of each candidate at the elections separately together with the photograph of the candidate and the registered political party or the independent status of the candidate;
- (e) sufficient copies of the register of voters for the electoral area;
- (f) such other things which the Chief Electoral Officer may direct to be kept at the polling station.<sup>15</sup>

#### **5.04 Procedure before Commencement of Polling**

The electoral officer at the polling station shall, immediately before the beginning of voting at a polling station, show to persons lawfully present at the station that the ballot boxes are empty and then shall close and seal the boxes in such a manner as to prevent the boxes from being opened without the seals being broken.<sup>16</sup>

#### **5.05 Procedure for Voting**

Voting for the elections at the polling station shall be conducted in substance and as nearly as possible in the following manner:

- (a) a person wishing to vote at the polling station shall:
  - (i) attend personally the polling station; and
  - (ii) satisfy the electoral officer of the identity to vote and that the person has not voted at the station or elsewhere at the elections;
- (b) the electoral officer, on being satisfied, shall:
  - (i) call out the number and particulars of the person as stated in the copy of the register of voters at the polling station;
  - (ii) in respect of each election separately, stamp a ballot paper with an official mark and deliver them to the person with an envelope similarly stamped with the mark into which the voter shall place the ballot paper;
  - (iii) place a mark against the name of the person on the copy of the register of voters to denote that a ballot paper in respect of each election has been delivered to the person; and
  - (iv) explain to the person how to record the vote; and
- (c) the person shall go immediately into one of the compartments at the polling station and, without delay, record the vote in respect of each election separately in the manner required, place the ballot papers inside the stamped envelope and place the envelope in the ballot box provided for this purpose.

Where a voter is incapacitated by blindness, or other physical cause or otherwise or is illiterate, the voter shall, after receiving each of the ballot papers and the stamped envelope, enter the compartment or the place designated for the purpose by the electoral officer accompanied by the electoral officer and a person selected by the voter and in the presence of the person selected direct to the electoral officer how the vote is to be cast and the electoral officer shall mark each of the ballot papers of the voter accordingly, place the ballot

papers in the stamped envelope and after leaving the compartment or the place designated for the purpose by the electoral officer with the voter and the other person place the stamped envelope in the ballot box provided for this purpose and the voter shall be deemed to have voted.

An electoral officer or an assistant electoral officer:

- (a) shall not refuse admission to the polling station of the person selected by a voter;
- (b) shall allow the person selected by a voter to be present at the time when the voter is instructing the electoral officer how the vote is to be cast; and
- (c) shall mark each of the ballot papers in the presence of the person selected by the voter.

A voter or the electoral officer, as the case may be, shall not place on either of the ballot papers or the stamped envelope any writing or mark by which the voter may be identified.<sup>17</sup>

### **5.06 Allegation of Irregularities**

Where an electoral officer at a polling station has reason to believe or a polling agent at that station alleges that a person wishing to vote at the station is not a person entitled to vote at the station, the electoral officer shall:

- (a) advise the person accordingly, giving reasons for the belief, or, where the polling agent has made an allegation, require the polling agent to state in the presence of the person wishing to vote the reason for the allegation;
- (b) warn the person that he may commit an offence by voting.

Where the polling agent refuses to state the reason for the allegation, the electoral officer shall disregard the allegation.

Where an electoral officer has warned a person wishing to vote and notwithstanding the warning the person:

- (a) persists in voting;
- (b) produces evidence that the person is the person entitled to vote;
- (c) makes and subscribes to the declaration stipulated,

the electoral officer shall record in writing the full name and address which the person gives and where the person votes, state that fact in the record.<sup>18</sup>

### **5.07 Declaration of Voter**

An electoral officer at a polling station may, but shall on the request of a polling agent, require a person who wishes to vote, before the person is given the ballot papers, to furnish evidence of the identity of the person to the satisfaction of the electoral officer and to make and subscribe to a declaration in the form provided by the Chief Electoral Officer.

Where a person who wishes to vote fails to furnish evidence of his identity to the satisfaction

of the electoral officer or make and subscribe to the declaration required, the electoral officer shall refuse to give to the person the ballot papers.<sup>19</sup>

### **5.08 No Communication with Voter at Polling Station**

No person, other than the Chief Electoral Officer or the electoral officer or assistant electoral officer of the polling station, shall communicate with a voter while the voter is in the polling station for the purpose of voting and the electoral officer may require any person who contravenes this stipulation to leave the polling station.<sup>20</sup>

### **5.09 Close of Poll and Counting of Votes**

The electoral officer shall, as soon as is practicable, after each ballot box is full and in respect of other ballot boxes after the close of the poll, in the presence of the respective polling agents who wish to attend:

- (a) close and seal the aperture of each ballot box and place the seal of the electoral officer thereto and allow the respective polling agents who are present to place their seals thereto;
- (b) separately in respect of each election, make up in a separate packet the unused ballot papers and envelopes;
- (c) mark the copy of the register of voters;
- (d) separately in respect of each election, complete a statement, to be known as the ballot paper account, in the form provided by the Director;
- (e) separately in respect of each election, place the packet of unused ballot papers and envelopes and register of voters together with any record made in respect of alleged irregularity in a bag and seal the bag with the seal of the electoral officer.

The electoral officer shall, as soon as is practicable, make arrangements for the counting of votes at the polling station and give notice of the time of counting to the candidates, if they are present, and the counting agents of each of the candidates and commence the counting of votes at the time specified in the notice.

In the case of the elections at the electoral area consisting of the islands other than Mahé and Praslin, the electoral officer shall forward the sealed ballot boxes, bags and the ballot paper accounts in respect of the elections to an electoral officer designated for the purpose by the Director who is referred as “designated electoral officer”.

The Chief Electoral Officer may appoint such assistants, to be known as enumerators, as the Chief Electoral Officer thinks necessary for the purpose of assisting the Chief Electoral Officer, the electoral officer or the designated electoral officer, as the case may be, in the counting of the votes.

The designated electoral officer shall, after the receipt of the ballot boxes for the electoral area consisting of the islands other than Mahé and Praslin:

- (a) make arrangements for counting of votes;
- (b) give notice of the place and time, which shall not be earlier than the close of poll of

- other electoral areas, of the counting of votes to the candidates, if they are present, and to the counting agents of each of the candidates; and
- (c) commence the counting of votes at the time and place specified in the notice and in the manner specified.

The electoral officer or the designated electoral officer, as the case may be, shall, at the time and place notified for the counting of the votes and in the presence of the candidates, if they are present, and the counting agents of each candidate who may be present, examine and offer the candidates and the counting agents the opportunity to also examine the seals of all ballot boxes and sealed bags, as the case may be.

In respect of each election, the electoral officer or the designated electoral officer, as the case may be, shall, in the presence of the candidates, if they are present, and the counting agents of each of the candidates who may be present, with the help of enumerators examine, count and record the number of envelopes contained in each ballot box.

When a stamped envelope:

- (i) does not bear the official mark;
- (ii) has anything written or marked by which a voter can be identified; or
- (iii) is mutilated or torn,

the stamped envelope shall be rejected and shall be endorsed with the word “rejected” by the electoral officer or designated electoral officer, as the case may be, and if a candidate or a counting agent of a candidate who may be present objects to the decision of the electoral officer or the designated electoral officer, as the case may be, also with the words “rejection objected to”.

The envelopes, other than the envelopes rejected, shall be opened and the ballot papers inside shall be examined and sorted into two separate groups, one for the first Presidential election and the other for the first Assembly election.

Where a ballot paper:

- (i) does not bear the official mark;
- (ii) has anything written or marked by which a voter can be identified;
- (iii) is mutilated or torn;
- (iv) has not been placed in a stamped envelope; or
- (v) does not contain a clear indication of the candidate for whom the voter has voted,

the ballot paper shall be rejected and shall be endorsed with the word “rejected” by the electoral officer or the designated electoral officer, as the case may be, and if a candidate or a counting agent of a candidate who may be present objects to the decision of the Chief Electoral Officer or the electoral officer, as the case may be, also with the words “rejection objected to”.

The ballot papers in each group shall thereafter be counted and the electoral officer or the designated electoral officer, as the case may be, shall record the number of ballot papers in each group.

The ballot papers shall be kept with their faces upwards while being counted and recorded.

Subject to the decision of the court on an election petition, the decision of the Chief Electoral Officer, electoral officer or designated electoral officer, as the case may be, as to the question arising in respect of an envelope or a ballot paper is final.

The electoral officer or the designated electoral officer, as the case may be, shall prepare a statement showing the number of envelopes and ballot papers rejected under the following heads:

- (a) want of official stamp;
  - (b) writing or mark by which a voter could be identified;
  - (c) mutilated or torn;
  - (d) a ballot paper not placed in a stamped envelope; and
  - (e) absence of a clear indication of the candidate for whom the voter has voted,
- and shall, on request, allow a candidate, if present, or the counting agent of each candidate, as may be present, to copy the statement.

A candidate or the counting agent of a candidate may, if present at the counting of ballot papers, require the Chief Electoral Officer or electoral officer, as the case may be, to have the vote recounted once.

The Chief Electoral Officer or electoral officer, as the case may be, may, on his own motion, recount the ballot papers.

In respect of each election, upon the conclusion of the counting of the votes, the electoral officer or the designated electoral officer, as the case may be, shall with the assistance of the enumerators:

- (a) in the presence of the candidates, if present, or the counting agents of candidates, as may be present, proceed to verify the ballot paper account by comparing the number of ballot papers recorded in the account with the number of ballot papers counted, rejected and unused;
- (b) seal in separate packets the counted, rejected and unused ballot papers and rejected envelopes;
- (c) prepare a statement as to the result of the verification carried out and, on request, allow a candidate or the counting agent of a candidate to copy the statement.

The electoral officer or the designated electoral officer, as the case may be, shall as soon as is practicable after the result of the election has been ascertained, transmit:

- (a) a statement of the result to the Director;
- (b) the ballot boxes, bags and other documents used in connection with the election to the Chief Electoral Officer.<sup>21</sup>

### **5.10 Second Ballot**

Where on the statement of the result transmitted to the Director in respect of the first Presidential election, no candidate receives more than fifty per cent of the votes cast, the Director shall not declare the result of the election and the provisions of the Regulations relating to a second ballot shall apply.

Where on the statement of the result transmitted to the Director in respect of the first Assembly election, an equality of votes is found to exist among the candidates receiving the highest number of votes in any electoral area, the Director shall without declaring the result of the election make arrangements for the holding of a second ballot in that electoral area among those candidates receiving equality of votes and the relevant regulation shall apply to the second ballot.<sup>22</sup>

### **5.11 Notice of Result of Election**

The Director shall, as soon as is practicable after receiving the statement of the result:

- (a) of the first Presidential election;
  - (b) of the first Assembly election,
- declare the result of the election.

As soon as is practicable after announcing the result, the Director shall, by notice in the Gazette:

- (a) publish:
  - (i) the results of the first Presidential election and the first Assembly election; and
  - (ii) in accordance with Schedule 4 of the Constitution, declare the number of proportionately elected members of the National Assembly which each political party is entitled to nominate;
- (b) call upon each registered political party which is entitled to nominate a proportionately elected member of the National Assembly to submit to the Director, within seven days after the publication of the results of the first Assembly election, the names and other particulars of the proportionately elected members.<sup>23</sup>

## **— Section 6 —**

### **ELECTION PETITION**

#### **6.01 Avoidance of Elections**

The result of the first Presidential election or the first Assembly election shall not be questioned or subject to review in any court except on an election petition presented to the Constitutional Court under the Regulations.

An election petition may be presented within ten days of the publication of the results.

A petitioner in an election petition may claim:

- (a) a declaration that the election is void; or
- (b) a recount of the ballot papers.

The Constitutional Court, before hearing an election petition, shall require the petitioner to furnish security of such nature and in such amount as the Court may direct for the payment of costs, charges and expenses that may become payable by the petitioner.

The Constitutional Court may declare that an election is void if the Court is satisfied:

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

The Constitutional Court may order a recount of the ballot papers where it is satisfied that there was an irregularity in the counting of the ballot papers that affected the results of the election.<sup>24</sup>

## **6.02 Trial of Election Petition**

The trial of an election petition shall be held in the same manner as a trial before the Supreme Court in its original civil jurisdiction.

The Constitutional Court may:

- (a) by an order, compel any person who appears to the Court to be concerned in the election to attend as a witness at the trial; and
- (b) examine a witness compelled to attend the Court or any person in Court, although the person has not been called as a witness.

A witness or a person present in Court may be examined or cross-examined, as the case may be, by the petitioner, respondent and Attorney-General or his representative, if present at the trial.

Where it appears to the Constitutional Court on an election petition:

- (a) that an act or omission of a candidate or the agent of a candidate or any other person, which, but for this regulation, would be an illegal practice, has been done or made in good faith through inadvertence or accidental miscalculation or some other reasonable cause of a like nature; or
- (b) that upon taking into account all the relevant circumstances it would be just that the

candidate, agent of the candidate or the other person should not be subject to any of the consequences for such act or omission, the Court may make an order allowing the act or omission, which would otherwise be an illegal practice under the Regulations, to be an exception to the Regulations and the candidate, agent or other person shall not be subject to the consequences under the Regulations in respect of the act or omission and the result obtained by the candidate shall not, by reason only of that act or omission, be declared to be void.<sup>25</sup>

### **6.03 Certificate of Court as to Validity of Election**

At the conclusion of the trial of an election petition the Constitutional Court shall determine:

- (a) whether the election was valid;
- (b) whether the election was void; or
- (c) whether a recount of the ballot papers is required or not, and shall certify the determination to the Director.

Such determination shall, subject to an appeal to the Court of Appeal, be final.

Where the Constitutional Court determines that an election is void, all the proceedings with regard to the election shall be recommenced.

Where the Constitutional Court determines that a recount of ballot papers is required, the Director shall:

- (a) cause the ballot papers to be recounted in accordance with the Regulations and subject to any directions of the Court; and
- (b) declare the result of the recount.<sup>26</sup>

### **6.04 Report of Court as to Illegal Practice**

At the conclusion of the trial of an election petition, the Constitutional Court shall report in writing to the Director:

- (a) whether an illegal practice has been proved to have been committed by a candidate or an agent of the candidate and the nature of the practice;
- (b) names and descriptions of all persons who have been proved at the trial to have been guilty of an illegal practice.

Before making any report in respect of a person who is not a party to an election petition the Constitutional Court shall give the person an opportunity to be heard and to call evidence to show why he should not be reported.

When the Constitutional Court reports that an illegal practice has been committed by a person, the person is disqualified for a period of five years from the date of the report from being registered as a voter and from voting at an election or a referendum.

The Director shall cause the name of the person reported to be removed from the register of voters and a note of the disqualification to be entered into any other register of voters prepared under any law.<sup>27</sup>

— *Section 7* —

**SECURITY**

A polling agent, counting agent or such other person authorised under the Regulations by the Director or the Chief Electoral Officer to attend at a polling station or at the counting of votes shall, unless he has already taken an oath of secrecy under the Regulations, take an oath of secrecy in the form provided by the Chief Electoral Officer before attending at the polling station or counting of votes.

The Director of Elections or Chief Electoral Officer, an electoral officer, designated electoral officer, assistant electoral officer, enumerator or any other person shall not, except for a purpose authorised:

- (a) seek to obtain any information as to the candidate for whom a person is about to vote or has voted at a polling station;
- (b) communicate to any person any information concerning for whom a person has voted;
- (c) communicate to any person as to the name or number of a voter who has or has not applied for a ballot paper or voted at a polling station or as to the official mark used for stamping a ballot paper;
- (d) communicate or seek to communicate with any person after that person has received a ballot paper and before that person has placed the paper in the ballot box;
- (e) communicate to any person any information regarding the number of votes a candidate has received in respect of a particular election before the declaration of the results of that election.<sup>28</sup>

— *Section 8* —

**OFFENCES**

**8.01 General Offences**

A person who:

- (a) for the purposes of procuring the registration of the person or any other person as a voter, knowingly makes, to any person having the duty of amending the register of voters, a false or misleading statement or representation;
- (b) applies to be registered as a voter in respect of an electoral area when the person resides in another electoral area and is already registered as a voter in respect of that other electoral area;

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- (c) forges or fraudulently defaces or fraudulently destroys a register of voters or any part thereof;
  - (d) forges, counterfeits or fraudulently destroys any official mark relating to the first Presidential election or first Assembly election;
  - (e) forges or counterfeits or fraudulently destroys a ballot paper or a stamped envelope;
  - (f) without due authority, supplies a ballot paper or a stamped envelope to any person;
  - (g) fraudulently puts into any ballot box any paper other than a stamped envelope containing a ballot paper which the person is authorised by law to put in;
  - (h) without due authority, takes out of any polling station a ballot paper or stamped envelope or has in the possession of the person a ballot paper or a stamped envelope outside a polling station;
  - (i) without due authority, destroys, takes, opens or otherwise interferes with a ballot box or packet of ballot papers or envelopes then in use for the purpose of the first Presidential election or first Assembly election;
  - (j) wilfully furnishes evidence or makes a false declaration under the Regulations;
  - (k) commits an illegal practice in connection with the first Presidential election or first Assembly election;
  - (l) without lawful authority, destroys, mutilates, defaces or removes a notice which is exhibited or any document which is made available for inspection;
  - (m) after a lawful demand to the person has been made, fails to give such information as the person possesses or unreasonably delays in giving the information;
  - (n) causes any disturbance or fails to comply with a lawful order of the Chief Registration Officer or a registration officer at any place where amendments to a register of voters is kept for inspection or of the Chief Electoral Officer, an electoral officer or a designated electoral officer at a polling station or place where the counting of votes is being carried out;
  - (o) obstructs the Director or an officer carrying out the functions of the Director in the performance of the functions of the Director or fails to obey a lawful order of the Director or the officer;
  - (p) annoys or molests or in any way interferes with a voter within the precincts of a polling station or a radius of 200 metres of a polling station,
- is guilty of an offence.<sup>29</sup>

## 8.02 Illegal Practice

A person commits an illegal practice where the person:

- (a) directly or indirectly, by that person or by any other person on that person's behalf, gives, lends or agrees to give or lend, offers or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter or to or for any other person on behalf of a voter or to or for any other person, in order to induce the voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at the first Presidential election or first Assembly election;
- (b) directly or indirectly, by that person or by any other person on that person's behalf, gives or procures or agrees to give or procure or to endeavour to procure, any office, place or employment to or for a voter, or to or for any person, in order to induce the

- voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of a voter having voted or refrained from voting at the first Presidential election or first Assembly election;
- (c) directly or indirectly, by that person or by any other person on that person's behalf, makes any gift, loan, offer, promise, procurement, or agreement referred to in paragraph (b) to or for any person in order to induce such person to procure or to endeavour to procure the vote of a voter at the first Presidential election or first Assembly election;
  - (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement referred to in paragraph (a), (b) or (c), procures or engages or promises or endeavours to procure the vote of a voter at the first Presidential election or first Assembly election;
  - (e) directly or indirectly, by that person or by any other person on that person's behalf, advances or pays, or causes to be paid, any money to or for the use of any other person, with the intention that the money, or any part thereof, shall be expended in bribery at the first Presidential election or first Assembly election or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at the first Presidential election or first Assembly election;
  - (f) before or during the first Presidential election or first Assembly election directly or indirectly, by that person or by any other person on that person's behalf, receives, agrees to receive or contracts for any money, gift, loan or valuable consideration, office, place or employment, for that person or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at the first Presidential election or first Assembly election;
  - (g) after the first Presidential election or first Assembly election, directly or indirectly, by that person or by any other person on that person's behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at the first Presidential election or first Assembly election;
  - (h) corruptly, directly or indirectly, by that person or by any other person on that person's behalf, either before, during or after the first Presidential election or first Assembly election, gives, or provides, or pays, wholly or in part, the expense of giving or providing food, drink, entertainment or provision to or for any person for the purpose of influencing that person, or any other person, to vote or refrain from voting at the first Presidential election or first Assembly election;
  - (i) corruptly accepts or takes any food, drink, entertainment or provision referred to in paragraph (h);
  - (j) directly or indirectly, by that person or by any other person on that person's behalf, makes use of or threatens to make use of, any force, violence or restraint, or inflicts or threatens to inflict by that person or by any other person, any temporal or spiritual injury, damage, harm or loss, upon or against a voter to induce a voter to vote or refrain from voting, or on account of the voter having voted or refrained from voting, at the first Presidential election or first Assembly election or who, by abduction, duress or any fraudulent contrivance, impedes or prevents the free use of the vote by a voter either to give or refrain from giving the vote at the first Presidential election or first Assembly election;

- (k) impersonates any other person in connection with the first Presidential election or first Assembly election;
- (l) votes or attempts to vote, or induces or procures some other person to vote, at the first Presidential election or first Assembly election if that person, or if to that person's knowledge the other person, has already voted at the first Presidential election or first Assembly election;
- (m) at a lawful public meeting held in connection with the first Presidential election or first Assembly election, acts or incites others to act in a disorderly manner for the purpose of preventing the holding of the meeting or the transaction of the business for which the meeting was called.

Where a person is convicted of committing an illegal practice, the person shall, in addition to any penalty imposed under the Regulations, be disqualified for a period of five years from the date of the conviction from being registered as a voter and from voting at an election or referendum under the Constitution or any other written law and the Director shall forthwith cause the name of the person to be deleted from the register of voters of the electoral area where the person is registered as a voter, and a note of the disqualification to be entered in all the registers of voters prepared under any other written law.<sup>30</sup>

## NOTES

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| 1. Constitution of Seychelles 1993, see article 113  | 14. Ibid., see regulation 13         |
| 2. Ibid., see article 114  | 15. Ibid., see regulation 14         |
| 3. Ibid., see article 115  | 16. Ibid., see regulation 17         |
| 4. Ibid., see article 116  | 17. Ibid., see regulation 18         |
| 5. Ibid., see paragraphs 1, 8, 9 and 11 of Schedule 7  | 18. Ibid., see regulation 19         |
| 6. Ibid., see article 112  | 19. Ibid., see regulation 20         |
| 7. Constitution of the Republic of Seychelles (First Presidential Election and First Assembly Election) Regulations 1993, see regulation 3 | 20. Ibid., see regulation 21         |
| 8. Ibid., see regulation 4   | 21. Ibid., see regulations 22-30     |
| 9. Ibid., see regulation 6   | 22. Ibid., see regulation 31         |
| 10. Ibid., see regulation 7  | 23. Ibid., see regulation 32         |
| 11. Ibid., see regulation 8  | 24. Ibid., see regulation 38         |
| 12. Ibid., see regulation 9  | 25. Ibid., see regulation 39         |
| 13. Ibid., see regulation 11   | 26. Ibid., see regulation 40         |
|  | 27. Ibid., see regulation 41         |
|  | 28. Ibid., see regulation 42         |
|  | 29. Ibid., see regulation 45(1)      |
|  | 30. Ibid., see regulations 45 and 46 |