

Report of the Commonwealth Expert Team

SEYCHELLES PRESIDENTIAL ELECTION

19 – 21 May 2011



COMMONWEALTH SECRETARIAT

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Commonwealth Expert Team Seychelles Presidential Election 19-21 May 2011

26 May 2011

Dear Secretary-General

We have now completed our Final Report on Seychelles Presidential Election held on 19 to 21 May 2011 and are pleased to forward this to you.

The 2011 Presidential election marks another significant step in Seychelles' continued transition into a progressive multi-party democracy. We found that whilst the technical aspects of the election on the three polling days was efficient, transparent and credible. T Team was concerned about some elements of the environment in which the election took place, which we present and discuss in greater detail in our Report. Despite these shortcomings, the Team believes that the 2011 Presidential electoral process was credible overall.

The Team noted that though some progress has been made since the 2006 Presidential election in specific areas, but much remains to be done on key issues including reform of the legal and administrative electoral framework, the independence of the public broadcaster, and matters relating to campaign finance.

A number of the recommendations made by previous and other international election observation teams have not yet been implemented. We endorse the views of our predecessors and provide further recommendations on key aspects of Seychelles electoral and related processes which we believe could help to bolster the country's electoral credibility and capacity for future elections.

As the Team today departs from Seychelles, we would like to express our thanks to you for the privilege of serving on the Commonwealth Expert Team to the Seychelles 2011 Presidential Election. It has been a rewarding experience and we hope that our findings and recommendations will be accepted in the spirit in which they were offered - as constructive suggestions from supporters and partners that wish the people and Government of Seychelles well in its continued programme of deepening democracy. We urge the Commonwealth Secretariat and the wider Commonwealth family to support Seychelles in this effort.

A handwritten signature in blue ink, appearing to read 'Julian R. Hunte', written over a light blue circular stamp.

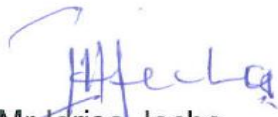
Dr. the Hon. Julian R. Hunte SLC OBE
Chairperson



Ms Priscilla Achakpa



Mr Lorne Gibson



Mr Idrisa Jecha



Ms Josephine Teakeni

INTRODUCTION

Invitation

Following an invitation from the Electoral Commissioner of Seychelles dated 22 February 2011 to send observers to Seychelles for the Presidential Election, the Commonwealth Secretary-General constituted a Commonwealth Expert Team comprising five experts. The Team was supported by three officials from the Commonwealth Secretariat.

The members of the Expert Team were as follows:

Dr. the Hon. Julian R Hunte SLC OBE - Chair
Former Foreign Minister and former President of the UN General Assembly
St Lucia

Ms Priscilla Achakpa
Vice Chairperson
Transition Monitoring Group (Domestic Election Observer Body)
Nigeria

Mr Lorne Gibson,
Former Chief Electoral Officer of Alberta
Canada

Mr Idrisa Jecha,
Acting Director of Elections
Zanzibar Electoral Commission
Tanzania

Ms Josephine Teakeni
Gender and Media Expert
Solomon Islands

Terms of Reference

The Terms of Reference for the Expert Team were as follows:

"The Commonwealth Expert Team for the Seychelles Presidential Election shall observe the preparations for the election; the polling, counting and results process; and the overall electoral environment."

We were invited to serve on the Expert Team in our individual capacities, and the views we express regarding the elections are our own and not those of either our respective governments or of the Commonwealth Secretariat.

Activities of the Team

The Commonwealth Secretariat support team arrived in Seychelles on 12 May 2011, while the Team arrived and commenced work on 14 May 2011. Following arrival in Seychelles, the Team received briefings from the Electoral Commissioner, members of the Elections Advisory Board, political parties and presidential candidates, the Liaison Unit for Non-Governmental Organisations (LUNGOS), Commonwealth High Commissioners, the Media Commission, the Seychelles Broadcasting Corporation and other private media, religious leaders, other observer teams and the Seychellois public on the background issues relevant to the Presidential Election. In addition to meetings with different stakeholders and interested parties, the Team studied documentation from various sources.

The Expert Team witnessed the final rally of the candidate of the ruling Parti Lepep. The opposition Seychelles National Party (SNP), New Democratic Party (NDP) and the independent candidate, Mr Phillipe Boullé, did not hold any public rallies.

The Team observed closely preparations for, and actual arrangements on, the three polling days of 19-21 May 2011.

The Team completed their Report and departed Seychelles on 26 May 2011.

Chapter One

POLITICAL BACKGROUND

Seychelles became an independent republic in 1976 under the leadership of an alliance between the Democratic Party (DP) led by Sir James Mancham, who became President, and the Seychelles People's United Party whose leader Mr France Albert René was appointed as Prime Minister. Mr René seized power soon thereafter, in June 1977, through a coup d'état at which time the National Assembly was dissolved. The Seychelles People's United Party was renamed the Seychelles People's Progressive Front (SPPF). A new one-party Constitution was proclaimed in March 1979.

Following the decision of President René to restore multi-party democracy in 1991, a new constitution was approved following a referendum in 1993. Under the new dispensation, the National Assembly allowed for 22 directly elected members, and 11 members nominated by political parties based on proportional representation resulting from their performance at the polls. Presidential and Parliamentary elections in July 1993 were won convincingly by President René and the SPPF. Sir James Mancham and the DP came second. The United Opposition led by Mr Wavel Ramkalawan obtained one seat in the National Assembly.

Multi-party elections were also held in 1998 and 2001 and contested by the same main parties and one independent candidate, Mr Phillip Boullé. President René was returned with 66.7% of the vote in 1998, and the SPPF secured 61.71% of the vote in the National Assembly elections. The United Opposition increased its share of the vote significantly, securing 19.53% of the Presidential and 26.06% of the National Assembly vote, and later became the Seychelles National Party (SNP). President René of the SPPF won the 2001 elections with a reduced majority, attaining 54.19% of the vote to Mr Ramkalawan's 44.95% and Mr Philippe Boullé's 0.86%.

President René stepped down on 14 April 2004 and handed power to the Vice President, James Michel. This marked a change in the Seychellois political landscape as President René had ruled Seychelles for the previous twenty-seven years, firstly through a coup d'état and subsequent one-party state structure, and then under a democratic mandate from 1993. The 2006 campaign saw Mr Michel contest the Presidential ticket in his own right, having inherited the position from his predecessor.

President Michel won the 28-30 July 2006 Presidential Election with 54% of the vote. Opposition Leader Mr Wavel Ramkalawan obtained 45.7% of the vote.

A three-person Commonwealth Expert Team (supported by two staff) was present and concluded that “the 2006 Presidential elections were credible and allowed for the expression of the will of the Seychellois people”.

The CET recommended, *inter alia*, measures towards the further improvement of the effective separation of state and party political functions, the establishment of an Electoral Commission based on international good practice, and the establishment of an independent Public Service Commission to address, among other things, the appointment and promotion of public employees. It also recommended mechanisms to facilitate inter-party dialogue, limits on campaign financing and strict enforcement of existing legislation on accountability and transparency, and a reduction in the prohibitive cost of establishing and operating radio and television stations by private and/or community interests.

In early October 2006 Parliament passed a law banning political or religious organisations from running radio stations, sparking a demonstration by opposition supporters which was broken up violently by the police; the Leader of the Opposition Wavel Ramkalawan and others were injured. The Opposition subsequently boycotted Parliament, leading to early elections.

National Assembly elections were last held from 10-12 May 2007. Twenty-five members are elected by popular vote, and nine are allocated on a proportional basis to parties winning at least 10% of the vote; members serve five-year terms. The ruling SPPF party won 56.2% of the vote and gained 23 seats, while the opposition SNP won 43.8% of the vote and gained 11 seats, the same result as the 2002 election. The Commonwealth did not observe these elections.

A Constitutional Review Committee was established on 16 April 2008 by the President as an ad-hoc body to review the 1992 Constitution, as is required by law. The Committee, composed of persons reflecting a broad spectrum of public opinion, submitted its Report to the President on 21 December 2009. The Report contained substantial proposals for constitutional reform, including matters that would impinge directly on the electoral process.

In November 2008 the International Monetary Fund agreed a two-year \$26-million assistance package for the indebted Seychelles economy, which was also entailed substantial economic reforms. In 2009, the Seychelles Government negotiated a substantial cancellation of its \$800 million foreign debt.

Since April 2009 Seychelles has received substantial military and other support from the international community to counter the threat of Somali piracy. In July 2010, the first successful prosecution of pirates in Seychelles was concluded, and eleven Somalis were jailed.

Chapter 2

CONSTITUTIONAL, LEGAL AND ELECTORAL FRAMEWORK

The Legal Framework

The principal legislation governing the Presidential elections in the Seychelles are the Constitution, the Elections Act and the Political Parties (Registration and Regulation) Act, revised in 1991. The Elections Act 1995, revised in 1996, provides the main detailed legal framework for the conduct of elections in Seychelles. There are also some regulations made pursuant to the Elections Act, such as the Election Advisory Board Regulations, 2010 and the Elections Regulation, 2006 dealing with signage and the use of government vehicles to transport voters to the polls.

Election Administration

Articles 115 and 116 of the Constitution of Seychelles provide for the establishment of an Electoral Commissioner. The Electoral Commissioner must be qualified to be a registered voter and of proven integrity and high repute. The person is appointed by the President from candidates proposed by the Constitutional Appointments Authority (CAA) for a term of office of not more than seven years, though the appointee is eligible for re-appointment. The CAA comprises three members: one nominated by the President, one nominated by the Leader of the Opposition, and one nominated by both of them through consensus.

According to the Constitution, the Electoral Commissioner is not subject to the direction or control of any person or authority in the performance of his or her duties. The Commissioner may only be removed from office for inability to perform the functions of the office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour on the recommendation of a tribunal appointed by the Constitutional Appointments Authority.

The functions of the Electoral Commissioner include:

- responsibility for the conduct and supervision of registration of voters and of elections and referenda under the Constitution, including appointing the day of any Presidential and National Assembly elections;
- keeping under continuous review the number and boundaries of the electoral areas into which Mahé and Praslin are divided;

- keeping under continuous review the practices and working, including such matters as finance, broadcast and advertising, of political campaigns in respect of elections and referenda under the Constitution; and
- having such other functions as may be prescribed by or under the Constitution or an Act.

The Electoral Commissioner is also the Registrar of Political Parties and is required to keep a register of all registered political parties. As Registrar, the Commissioner must, on or before 30 January 2011 each year, determine the total amount of financial assistance to be paid out of the Political Parties Financial Support Fund (currently set at a level of 500,000 Rupees) to each registered political party that is eligible to receive financial assistance.

Authority for the provision of financial support from public funds to political parties is found in Article 118. of the Constitution. The basis of allocation to each party is the proportion of votes received in the previous National Assembly elections. So a party receiving 50% of the votes in those elections, would receive 50% of the Fund's resources. According to section 3 of the Political Parties (Registration and Regulation) Act, the Registrar must make such payment in such manner and times as the Registrar in consultation with the parties may determine. Currently, the allocation is provided bi-annually. The Electoral Commissioner also appoints all election officials.

Previous Commonwealth and other observer reports have consistently recognised the technical competence and seeming independence of the Electoral Commissioner. This Mission was no exception. Despite this, opposition political parties continue to question the impartiality of the Electoral Commissioner, suggesting that as a sole commissioner appointed by the President, the individual cannot be independent and impartial in his actions. Previous Commonwealth Experts Teams have suggested that the office of the Electoral Commissioner be transformed into a full-fledged independent Commission in a bid to remove any perception of possibility for political influence over the Commissioner, and to build greater confidence and trust amongst political parties in its functions.

This was also recommended in the 2009 Constitutional Review Committee Report and is a matter under consideration by Government.

Independent Electoral Commission

As noted above, one of the key 2006 recommendations called for "the establishment of a permanent, independent and adequately resourced Electoral Commission" following the practice found in many other democratic countries.

Since that time, the Commonwealth Expert Team is pleased to see that the informal and ad hoc Technical Advisory Board that was formed prior to the 2006 Presidential Election has now been formalized in law as a standing body. The new Elections Advisory Board was established by regulation in 2010. Its role is to advise and assist the Electoral Commissioner in the areas of voter registration, electoral boundaries, establishing important election calendar dates, public consultation, reviewing electoral laws, and other measures to ensure good governance and transparency in the management of elections. The composition of the Electoral Advisory Board includes candidate representation in the case of a presidential election and political party representation in the case of a National Assembly election, as well as provision for independent candidate representation. The other members include the Election Commissioner, two members of his permanent staff and another 3 members named by the Electoral Commissioner.

Unfortunately, while the Board must meet at least 3 times annually according to the regulation, the candidate and political party representatives on the Board can only participate in an election year during the period between nomination day and polling day. The Electoral Commissioner has informed us that he has extended an informal invitation for party representatives to attend board meetings regularly between electoral events, but they have declined to do so. While the formation of the Elections Advisory Board is a welcome development that has the potential for improving inter-party/candidate discussion on electoral issues of common concern which could lead to greater trust, understanding and mutual respect amongst all participants in the election process, it falls short of an earlier recommendation for the formation of a permanent independent Electoral Commission.

Through the course of our discussions with Government officials, we have gained the impression that they are now receptive to the establishment of an independent Election Commission. However, our concern is that while they may very well go through the exercise of establishing such a Commission in fulfilment of our recommendation, the appointees to the Commission must be from a broad cross-section of stakeholders and the appointment process must also be, and be seen to be, a truly independent process. Presidential and Electoral Commissioner appointments to a newly constituted Electoral Commission will not quell the existing scepticism and mistrust of electoral governance and administration.

These types of appointments would lead to a repeat of the disappointment that came with the recently created Seychelles Media Commission to oversee and ensure freedom of the media. More will be said about the media in Seychelles in the next chapter of this report. Also, the mandate (powers and functions) of the Election Commission must be broad enough to have a meaningful impact on the governance and administration of elections. Furthermore, the Commission must be adequately resourced such that it can adequately give effect to its mandate and properly enforce the election law.

It is therefore recommended again that the National Assembly establish a permanent, independent and adequately resourced Electoral Commission. This Commission should not supplant the Elections Advisory Board.

Campaign Finance Laws

There is a common belief that money can have a profound influence on the outcome of an election. Some jurisdictions, therefore, control the source and amount of contributions received annually, as well as the amount of money that can be spent during an election. Article 117.(1) of the Constitution of the Republic of Seychelles requires the Electoral Commissioner to control election expenditures of political parties and candidates, as well as contributions made to these political entities. The Elections Act lays out provisions for doing so in sections 93 and 94. The 2009 Constitutional Review Committee Report also recommends that the law should provide for greater control of spending or use of funds during election time to prevent abuse of funds at the disposal of a party.

In the Elections Act, the definition of an election expense for a candidate or political party is quite encompassing and includes specifically the costs of public meetings, organising public displays, print and other advertising, and more generally the cost of presenting to the voters the candidate, the views of the candidate, or of the political party that nominated the candidate. These expenses are to be incurred only by the candidate or the agent of the candidate or party and no other person or body of persons. The purpose of this restriction is so that proper records can be kept. Candidates and political parties must keep records of and report all funds received in connection with the election and all election expenses incurred. While the required reports are generally submitted on time, there is currently no way of verifying that the reports contain a complete and accurate disclosure of all election spending or all political contributions.

There was an earlier recommendation made by the 2006 Commonwealth Expert Team for strict enforcement of the existing legal requirement to declare campaign expenditures and the declaration of political contributions. There does not appear to have been any progress on this front. The 2011 Commonwealth Expert Team reiterates this same recommendation. The Expert Team would further suggest that in addition to strict enforcement of campaign finance laws, that the National Assembly consider removing from the Elections Act the specific exemption from reporting the identity of the person or source of the contribution and the person in respect of whom the expense was incurred.

In the interests of transparency of the funds that are used to contest elections, it is suggested that the election law be amended to include a requirement for parties and candidates to publicly disclose the source of political contributions, as well as the amount. The National Assembly should

consider limiting the amount of contributions that can be received or the amount of funds that can be spent, or both.

In the interests of reducing outside influence on the electoral affairs of Seychelles, the Assembly should consider restricting the source of political contributions to persons eligible to vote in Seychelles elections. In order to improve the ability of the Electoral Commissioner to enforce campaign finance laws, reports required to be filed should first be audited by a professional auditor and the Electoral Commissioner should be given additional resources to review and investigate suspect reporting.

Voter Eligibility

The eligibility criteria for voting, eligibility for inclusion on the register of voters, and "rules" of residency were discussed with the Expert Team by several stakeholders. It should be noted that a constitutional challenge of certain sections of the Elections Act concerning voter eligibility and voter registration has been made and has not yet been dealt with by the Constitutional Court of Seychelles. The Expert Team is, therefore, not in a position to comment further about this issue.

Voter Registration

Seychelles operates a system of continuous voter registration. A register of voters is revised every year, commencing in January. The 2011 voter register certified by the Chief Registration Officer on 31 March 2011 comprises some 69,480 voters.

To be registered as a voter, the voter must:

- be a citizen of Seychelles;
- have attained the age of 18 years;
- reside in an electoral area;
- be not under any written law adjudged or otherwise declared to be of unsound mind or detained as a criminal lunatic or at the President's pleasure at the time of the preparation of the register of voters; and
- be not serving a sentence of imprisonment of or exceeding 6 months imposed by a court in Seychelles at the time of the preparation of the register of voters.

During earlier Commonwealth Missions, the opposition did not make any claims as to the general quality of the register, though they claimed that the Registration Officer did not provide details of the register in a manner they wanted. In light of one case in which the courts upheld that one voter was wrongfully denied registration in the 2007 Parliamentary election, the registration process was implemented in strict adherence to the law (rather

than a more flexible arrangement undertaken previously which, paradoxically enabled greater engagement by political parties).

During this Mission, there was much concern expressed by opposition parties regarding the quality of the voter register. Concerns were expressed generally that there were more people on the register than there are eligible voters. Some estimated that number to be approximately 4,000 voters. The Election Commissioner also estimated that there are a similar number of inactive voters on the register due, primarily, to their inability to update and purge the register because of the unavailability of current (2010) Census information.

While we were not able to obtain independent verification of the allegations, several individuals told the Expert Team that citizenships (passports) had been sold to otherwise unqualified applicants, that the government was issuing duplicate National Identity Cards, that there were deceased persons on the register, and that the practice of including underage persons in the register as “voters in waiting” can lead to abuse. There was also concern expressed that the system of having some voters marked off in district registers and others marked off on the master voter register creates opportunities for fraud as does the practice of conducting the election over a 3-day period. Again, in response to our requests for support of the allegations regarding abuse and fraud as it relates to the voter register, no fact-based evidence could or would be supplied.

It should be noted that some of the current practices used by the Electoral Commissioner’s office in compiling the voter register are common practice in other jurisdictions. Many other electoral offices divide their jurisdictions or territory into districts, divisions or electoral areas and compile separate lists of the voters within. They also use combinations of master and separate voting area lists for efficiency in the administration of elections. Political entities also find the separate voting area lists indispensable for campaigning. Capturing information about under age or provisional voters is also becoming more popular as a means of keeping voter registers current. The availability of this information allows new voters to automatically be included on the register when they reach the age of majority.

The practice of physically including them on the official register, however, while permitted in the Seychelles Elections Act, is not advised. The provision of the law that authorises the inclusion of underage persons on the register and the cycle of updating the voters list annually in January of each year, means that the register used in an election can contain a substantial cohort of ineligible voters. It should be noted that underage and otherwise ineligible voters are designated as such on the register.

Also, many jurisdictions conduct voting over a several day period, for exigencies of geography and logistics such as in Seychelles. We were told that it would be possible to conduct voting in Seychelles on a single day, but

at a much greater financial cost to the public. It should be noted that as voter turnout declines in some countries, solutions have been sought to increasing participation by extending the time (hours and days) for voting to make it more convenient for the voter.

Keeping a voter register accurate, current and complete is a large and important task. All jurisdictions struggle with this job. However, it would seem that the Electoral Commissioner has some fairly wide ranging authority as per section 7.(2) of the Elections Act to obtain the kinds of information necessary to assist with this task. The Expert Team observed over the 3 days of voting during the 2011 Presidential Elections that the vast majority of voters were accurately displayed on the list and that only a very small number of individuals presented themselves as voters who could not be found on either the district or master register. This, of course, does not speak to whether there are duplicate voters or otherwise ineligible voters on the register. Without specifically testing or measuring the quality of the register, it is not possible to know the degree to which it conforms to the requirements of the law or otherwise accomplishes its intent.

The Expert Team also heard numerous complaints from political party representatives that the process of distributing and verifying the register leaves much to be desired. The Chief Registration Officer updates and generally maintains the register by making additions, deletions and corrections on an ongoing basis but must perform this activity at least once per year according to the law.

On 15 of January of each year, the Chief Registration Officer must publish a notice inviting persons who are or claim to be eligible to be on the register to inspect the list. They can attend a district registration office set up temporarily for this purpose. Voters can, at any time during the year, check to verify if their name appears on the register via mobile phone. A very high percentage of Seychellois possess a mobile phone. Despite what some of the political parties claim to be the practice, a person can, by law, inspect and apply for a correction of their voter information or information concerning another voter. This inspection period lasts for a maximum of 14 days.

The complete voter register is supplied to political parties in January of each year. An updated, certified list is also provided on March 31 of each year. If there is a Presidential or National Assembly election in a given year, a copy of the register is also provided to all candidates on Nomination Day which is 21 days before the election. This latter practice is not a legal requirement but, rather, it is contained in the election Code of Conduct. Three copies of the register are also placed in the Archives for public viewing as is required by law. Political parties have requested an electronic copy of the register but this has not been permitted. The political parties would like to receive a copy of the register in paper and electronic form more frequently.

Another issue regarding the voter register concerns the Electoral Commissioner's rules regarding the voting area lists that are issued to the candidate's agents for use at the polling station on election day. Agents are required to use the lists supplied by the Chief Registration Officer and are not permitted to use the lists they were previously given on Nomination Day. Political parties claim that these lists are arranged differently than the lists supplied on Nomination Day. The candidate or party agents are also not permitted to take these lists from the polling station at the end of election day. There does not appear to be a good reason for this restriction on polling day lists.

Political parties and candidates feel the process for updating the voter Register is not transparent enough nor is the register itself accessible enough to permit sufficient time for scrutiny of the list between elections. Rules regarding the return of lists used on election day contribute to suspicion concerning fraudulent inclusions and omissions on the register. It is recommended that the period of list inspection and revision be extended and streamlined to permit more time for voters to verify their information and to have it corrected. It is also recommended that political party and candidate agents be permitted to retain the district lists given to them on polling day.

Electoral Commissioner Reporting and Recommendations

The Constitution [Article 116.(2)] requires the Electoral Commissioner to issue a report to the President and National Assembly within 90 days on the conduct of the political campaigning leading up to an election or referendum and on the election or referendum itself. The Elections Commissioner, in his capacity as the Registrar of Political Parties, reports on an annual basis. A report is also prepared following a boundary review that occurs approximately every 5 years. In practice the election report is submitted first to the President and then to the Speaker of the Assembly. Once the report is submitted to the Speaker, who distributes it to all Members, the report is available to the public. In future the report will be posted on the Election Commissioner's website. Within the report, the Commissioner is also required to make such recommendations as are considered necessary for the purpose of ensuring true, fair and effective elections and referenda. Such a provision in law, particularly through its inclusion in the Constitution, is an encouraging sign of the independence being bestowed upon the Electoral Commissioner.

In order to determine how effective that authority has been, however, one would need to look at the number and types of recommendations that have been made by the Electoral Commissioner throughout his tenure, the extent of prior consultation with interested parties, and the National Assembly's record of adopting substantive changes and improvements recommended. At the time of writing this report we were not able to obtain a copy of past Commissioner's reports to see the types of recommendations (if any) included

therein. The Electoral Commissioner has also at times written to the Attorney General to suggest changes to the election laws.

It is recommended that the Electoral Commissioner consult with a wide range of election stakeholders before preparing his public reports, that he prepare a report to the National Assembly annually and following elections, and that he use the occasion of these reports as an opportunity to make substantive recommendations to amend the elections law to further enfranchise voters and to improve the accessibility, administration of elections, and enforcement of election laws.

Nominations

Under the electoral law, candidates for the Presidency and for the National Assembly are required to complete nomination forms provided by the Electoral Commissioner and also provide a deposit either in cash or in the form of a bank guarantee. The number of names and the deposit required for nomination are set by the Electoral Commissioner. These requirements for nomination should be established in law. For the Presidential Election, the number of names was 500 and the deposit is SR 15,000. For the National Assembly elections, for comparison, the number of signatures required for each candidate is 50, with a deposit of SR 1,500 per candidate. A banker's guarantee was accepted in lieu of a cash deposit for all nominations.

Nomination Day is also set by the Electoral Commissioner and there is only one day for the nomination of candidates. Nomination papers for a Presidential election are required to be submitted to the Chief Electoral Officer and are required to be endorsed by persons entitled to vote at the election to the satisfaction of the Chief Electoral Officer. Papers received after the time specified by the Electoral Commissioner are considered invalid and are to be rejected. Papers submitted before the deadline on Nomination Day are to be reviewed by the Chief Electoral Officer as soon as practicable after the deadline to determine whether to accept or reject the Paper. Under the electoral law, a candidate could object to the acceptance of a nomination paper of any other candidate on the grounds that the other candidate was not qualified to stand for the election, or that the nomination paper did not comply with the requirements laid down by law. The contesting candidates are, therefore, initially allowed by the Chief Electoral Officer to inspect each other's nomination papers on Nomination Day. The determination of the objection by the Chief Election Officer is final.

The Commonwealth Expert Team is aware of the case of Viral V Dhanjee who has claimed a serious breach of his constitutional rights by the Chief Electoral Officer and Electoral Commissioner in denying him the right to participate as a candidate in the 2011 Presidential Election by rejecting his nomination paper. This matter was heard by the Constitutional Court of Seychelles. Of

significance was the Courts judgement that the petitioner's right to offer himself as a candidate for the office of President had been violated.

The Court also observed that the Constitution requires that the number of people to endorse the candidates' nomination to the satisfaction of the Commissioner and the sum of money to be deposited are to be prescribed under an Act. The Elections Act does not prescribe either of these requirements for nomination. The setting of these criteria are left with the Electoral Commissioner.

The case of Viral V. Dhanjee is under appeal and we therefore, cannot offer further comment. The case highlights, however, a need to amend the Elections Act with regard to the nomination process and the need to review the Elections Act more broadly to ensure that it contains fair, complete and satisfactory electoral rules and procedures, as well as to ensure there is accuracy and internal consistency within the law. The Commonwealth Expert Team recommends that the Elections Act be amended to provide for a longer period for the submission of nomination papers in order that they may be properly verified by the Chief Electoral Officer. It is also recommended that that the form and requirements of the Nomination Paper be prescribed in law.

Voter Inducement and Vote Procurement

The issue of vote buying and other forms of voter inducement was very prominent in discussions the Expert Team had with stakeholders. Most stakeholders we interviewed either alleged the practices were rampant during this election, as well as in past elections, or claimed that they had heard of it occurring. Even members of the public we spoke with less formally believed the practices were wide spread.

There is clearly an element of mistrust in the voting process on the part of political participants and some members of the public alike. Part of the scepticism relates to the perceived lack of enforcement of the election laws. There are offence provisions and penalties for voter inducement, as well as for many other fraudulent acts. Participants in the democratic process must have sufficient respect and deference for the election laws and confidence that suspected and reported illegal behaviour will be thoroughly investigated and prosecuted where warranted. It is recommended that adequate funding be provided to the Electoral Commissioner so that there can be strict enforcement of the elections laws.

Voter Education and Participation

Voter education is an important element in the election process. Voter education can be conducted by the body responsible for administering elections, the political parties that are contesting the election, the media and domestic observer groups (if present). The Expert Team received conflicting

and confusing information as to whether voter education had been conducted by any of these groups in the 2011 Seychelles Presidential Elections. The Office of the Electoral Commissioner should have a mandated responsibility to provide voter education on an ongoing basis, and not only at the time of an election.

Fortunately, the voter participation rate is quite high in Seychelles elections, but more should be done to educate new voters, to try to understand characteristics of those who are not participating in the electoral process, the reasons for their non-involvement and efforts should be made to encourage the involvement of those who do not exercise their franchise. The important task of educating voters and encouraging participation by all citizens cannot be left up to the political parties. The Expert Team recommends that the Elections Act be amended to give the Electoral Commissioner a mandate to inform voters of their right to vote, the rights of citizens to participate in the democratic process, the rules regarding elections, and the voting process.

Chapter 3

THE CAMPAIGN

The Official Gazette of Monday 21 February 2011 set out the Presidential Election Timetable. The official campaign period began a day after nomination day, and ran from 28 April 2011 to 15 May 2011.

The team welcomed the Code of Conduct agreed by the political parties and the presidential candidates. This code aimed at, *inter alia*, ensuring the integrity of the electoral process and maintaining a peaceful atmosphere during the election campaign and on polling day. It also detailed acceptable standards of behaviour related to electioneering during the campaign period.

The candidates adopted different campaign strategies. The candidate of Parti Lepep was the only one that held campaign rallies. The campaign among other candidates was conducted largely through door-to-door canvassing, political broadcasts provided for through the public broadcaster, in the private print media and on billboards. No candidate reported any impediments to their activities. The campaign was largely peaceful. We received a number of reports, however, that several billboards of some candidates had been defaced or destroyed, while others had to be removed after they were erected illegally. The Team noted various issues that were highlighted by almost all stakeholders relating to the perceived imbalance in the media coverage of the various candidates before the official campaign commenced, which allegedly continued to a lesser degree once the official campaign began.

The Team was able to witness the final campaign rally of Parti Lepep on 15 May which appeared to be well organized. Campaign materials on display included t-shirts, caps, flyers, clappers, large bill boards, refreshment, live music, party flags. The public broadcaster carried the event live on radio and television. The party supporters, the majority of whom appeared to be women and young people were orderly.

The reasons provided for by the opposition parties opting out of public rallies included cost factors, distorted public media coverage, perceived fear of intimidation and victimisation of opposition supporters, and their inability to secure their preferred venue on Mahé for the final day of campaigning.

The issues that dominated the campaign, included social housing, water pollution, employment, pensions, the state of the economy, the role of foreign direct investment, alleged selling of Seychellois passports, access to land, the acquisition of land by foreign investment, levels of foreign workers, influence

of money and inducement of voters. A more thorough discussion on the vote buying is provided Chapters Two and Four.

The Media

Seychelles has a limited but growing media industry. The dominant media outlet is the publicly-owned Seychelles Broadcasting Corporation, which runs the only television and radio station. In addition, there are two daily newspapers and three party political weeklies.

A new Seychelles Broadcasting Act was passed in March 2011, and aimed to transform the SBC to operate independently of the influence of the State and other bodies, persons or political parties. We noted that despite this new legislation, there is widely-held view that the SBC media coverage is still overwhelming one-sided and dominated by the government with limited opportunities for opposition parties to access and air their views outside the official campaign period. We believe that there is a need for further reform of the SBC to give effect to its new role as a public service broadcaster, with equitable access to alternative political viewpoints outside the limited campaign period.

The cost of operating licenses for radio and television stations remains prohibitively high, at approximately \$80,000 per year. This high license fee has prevented independent broadcaster operators from emerging. An enabling democratic environment should be encouraged by substantially reducing the prohibitive cost of establishing and operating private radio and television stations. Discussions with government officials revealed a willingness to reduce the cost of licensing.

The Seychelles Media Commission was created by an Act of Parliament in December 2010, but only became operational in February 2011. The Commission consists of a Chairperson who is also the Chief Executive Officer and seven members, all of whom are appointed by the President. Five members are candidates proposed by the Judiciary, the National Assembly, the Department of Information, the Liaison Unit for Non-Governmental Organisations and the Seychelles Media Association. Two other members of good standing are appointed directly by the President.

Its stated purpose is to preserve the freedom of the media and maintain a high standard of journalism in Seychelles. It provides an independent arbitration mechanism between media organisations and between the public and the media. Concerns were expressed about the method of appointment and composition of the Board, indicating a high level of scepticism as to its neutrality. The Team noted, however, that the Commission had only just begun its work, and we hope that it will carry out its mandate effectively and thereby gain the trust and confidence of the media and general public.

Gender

Seychelles is progressive in its gender issues, and has a high level of participation by women in active politics. We noted, however, that none of the presidential candidates, or running mates was female. Furthermore, only nine out of thirty-three Members of the current Parliament are women.

Seychelles has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Article 4, in particular, calls for equal representation of women in public and political life. The Team recommends the implementation of CEDAW in domestic law, and the promotion of affirmative action and proportional representation in the holding of public office. It also recommends that gender issues be integrated and mainstreamed in constitutional and electoral reforms to reaffirm the principles of non-discrimination, equality, affirmative action, women's right to freedom, democratic processes and security.

Domestic Election Observation

The Team noted that the Constitution and Elections Act are silent about the role and participation of the civil society in democratic processes.

Discussions were held with all stakeholders regarding the role of civil society in the electoral process. The Liaison Unit for Non-Governmental Organisations (LUNGOS), views itself as a national platform for NGOs and civil society. Its membership spans a wide spectrum of non-governmental organisations (NGOs) and Civil Society Organisations (CSOs), including professional bodies, human rights groups, faith-based organisations, media and gender-related networks. LUNGOS receives funds from Government to run some of its operations.

In 2006, the Centre for Rights and Development (CEFRAD), an NGO, applied for accreditation as a domestic election observer. It was reportedly denied accreditation on the basis of political affiliations. LUNGOS formally applied for accreditation as domestic electoral observers on 4 January 2011. The Electoral Commissioner acknowledged the essential role of Domestic Electoral Observers in the electoral process in promoting domestic electoral integrity, transparency and national ownership. He stated, however, that the Electoral Advisory Board had decided that LUNGOS as a liaison entity "is not adequately constituted to run an observer mission as its independence would be compromised".

The Electoral Advisory Board recommended that immediately after the Presidential election, LUNGOS incorporates an NGO with the specific objective of observing elections and conducting civic education programmes.

In view of the critical role that domestic observation plays in the democratic process, we urge the Electoral Commissioner and LUNGOS to work together to agree on the modalities and institutional framework that would facilitate domestic electoral observation.

The Team believes the Commonwealth is uniquely placed to create a platform for exchanging experiences and best practice on CSO engagement in democratic processes, including domestic electoral observation and is encouraged to explore how this can best be done.

Chapter Four

ELECTION DAY

Polling took place on 19, 20 and 21 May 2011 in accordance with the opening times stipulated by the Chief Electoral Officer, as provided for in the Electoral Act. Given the reportedly highly mobile nature of Seychellois, special provisions were once again made for voters to vote where they were located in an effort to ensure no citizen was disenfranchised. Logistical preparations and distribution of materials appeared to have arrived in correct order and in a timely manner at most polling stations.

Members of the Team observed voting on 19 and 20 May 2011 on the outer Islands of Alphonse, Assumption, Bird, Coetivy, D'Arros, Denis, Desnoeuufs, Desroches, Farquhar, Fregate, Remire and Silhouette. On the final voting day, 21 May 2011, we witnessed voting in all 25 electoral areas of Seychelles: the twenty-two on Mahé, two on Praslin and the one on La Digue for the Inner Islands. We witnessed the counting of votes at four Electoral Areas: Bel Ombre and Point Larue on Mahé, Grand Anse on Praslin, and Inner Islands on La Digue.

As there is no provision for voting by proxy or postal ballot, it is incumbent on the Chief Electoral Officer to provide voting facilities to members of the Elections staff, and emergency personnel and police officers who would unavoidably be on duty at a location away from their place of registration, on the relevant polling day. The Team was informed that special voting procedures had been established in previous elections based upon a gentleman's agreement among all parties and candidates. This had enabled a special voting area to be established for previous elections on Mahé to cater for such personnel, and residents of the home for elderly persons and hospital patients.

Prior to the 2011 polls, this arrangement was however formalised formally through an amendment to the Elections Act, and a special voting station was listed in the Official Gazette and duly established on 19 May for this category of voters. Also on 19 May, a voting station was established, as before, at North-East Point Regional Home for the Elderly to afford voting facilities to residents of two local old people's homes and patients of North-East Hospital.

The Team welcomes the continued efforts made by the Electoral Commissioner seeking to ensure that all voters have the opportunity to cast their vote, including the elderly and infirm. As noted in Chapter Two, ad hoc agreements enabling voting cannot and should not govern the manner and parameters of the voting process. The process should be predictable,

consistent, transparent and accountable if it is to be understood and relied upon by all stakeholders. The authorised through formal legal provision by amending the Elections Act as so as to set out clearly the provision for the special voting station on Mahé in law, is therefore welcomed.

Polling Hours

Before the beginning of voting, Electoral Officers at stations at which Team members were present, followed procedures provided in official guidelines issued by the Electoral Commissioner: Officials displayed the empty ballot boxes to all present and sealed them in the presence of candidates' agents and international observers. At these stations, all the established procedures set down for the opening of the poll were followed.

Commencement of polling started promptly at 0700 hours on the main polling day of 21 May 2011 in all polling stations at which members of the Team were present, and reportedly throughout Seychelles. Voting also began promptly as long queues of eager voters having formed at many polling stations well in advance of their opening. In a departure to previous elections, polling stations officially closed at 1900 hours so as to enable members of the Seventh Day Adventist Church to cast their vote at a time which accommodated their religious practice. Voters in the queue at 1900 hours were allowed to cast their ballots.

Voting Method

The eight-step voting method followed procedures used previously. Guidelines on voting and count procedures were issued to Electoral officials, though the Team noted that the guidelines appeared to be those produced originally in 2001 and did not reflect changes made in voting procedures that pertained for 2011. The Electoral Commissioner should revise and update all such materials for officials to reflect current practice, ahead of the next election. The process itself began with an examination of the voter's left hand under ultra-violet light to ascertain that s/he had not already voted. The second step involved verifying whether the prospective voter's name appeared either on the electoral area register or the Master register.

Voters whose names did not appear in either of the above registers were allowed to vote on production of their registration slip issued by the Registration Officer. The Document Check Officer then called out details of the voter on the relevant register for the benefit of the candidate agents who were also checking their copies of the voters' register. Prospective voters were required to produce their National Identity Card or Passport as a form of identification. The Electoral Commissioner confirmed that voters could produce an alternate form of identification, including one without a photograph, and sign an official and witnessed affidavit affirming their identity. Having done so, such voters were eligible to vote. Members of the

Team noted, however, inconsistency by Electoral officials in the application of this practice on the main voting day. A number of voters who did not produce their National Identity Card or Passport specifically were seen to have been denied the opportunity to vote.

Most voters' names at stations were found on either the electoral area register or the master register. In a few cases, voters reported that their names had been transferred to another electoral area. Prospective voters on neither of the above lists, and who did not have registration slips were not allowed to vote.

The third step involved marking of the voter's left thumb and index finger with invisible ink. At the fourth step, the left hand of the voter was then checked under ultra-violet light to ensure that the voter's index finger was well stained.

At the fifth step, the voter was issued with a pre-folded ballot paper which was officially marked in the next step of the process. The voter was then directed to a vacant booth in which they marked the ballot paper with the felt marker provided therein as the seventh step, and then re-folded and placed the ballot paper in the ballot box, and then exited the polling station as the final steps in the process. The Team welcomed the extra efforts made by some Electoral Officers presiding over voting at some of the Outer Islands who explained the voting procedure to some voters resident there who had not had access to the usual voter education programmes and notices that had been broadcast by SBC and the print media.

In all voting observed by members of the Team, officials for the most part appeared knowledgeable, experienced and fully in charge of their stations. Procedures were followed correctly, and few instances occurred wherein voters were not on the register at the District at which they expected to vote. The Team noted the concerns expressed by some stakeholders that the quality of the Register, as a result of alleged missing, ghost or duplicate entries, though it had no means to investigate or verify these claims. The Team noted that on polling day itself, the disputes relating to register usually related to names initially not found on the relevant District register, but that most of these incidents were resolved satisfactorily. With few exceptions, voters were allowed to vote at the station at which they were present, or directed to another station at which they could do so.

Alternate Polling Procedures

At Outer Island and special polling stations, the voting procedure differed slightly as follows:

- Each Voter was issued with a ballot paper and an envelope indicating the electoral area of registration of the voter.

- After voting, the ballot paper was inserted into the envelope which was then sealed and cast into a separate ballot box dedicated for such ballots.
- At the close of the poll, the ballot box containing the ballot papers was sent to the Chief Electoral Officer, together with the list of those who had voted.
- The Chief Electoral Officer on 21 May faxed the list of those who had already voted to the relevant electoral area, and subsequently distributed the ballot papers. The Team noted some inconsistency in practice by Electoral Officials, with the list of names of Voters on the District register that had already voted elsewhere being shared with officials and polling agents at differing points during the main polling day. The Team recommends that these names be shared with officials and agents prior to the commencement of voting.
- At the close of the poll, these ballot papers were counted with the other votes cast in the relevant polling station.

The Team was satisfied that in all stations where alternate voting took place, procedures were followed correctly. Where names were found to be missing from the District register, the matter was usually resolved to the satisfaction of the voter and candidate agents. It was noted, however, that in a few instances voters were found not to be present on either the district or Master register, and were therefore not allowed to vote.

Assisted Voters

At most polling stations visited by members of the Team, priority was given to the elderly, infirm, and pregnant women in queues at polling stations. At several polling stations, a separate line was also reserved for the above categories. Elderly and infirm voters could be assisted by a person of their choice up to the polling booth, but were required to vote on their own or with assistance of the Electoral Officer with a witness present.

The Team was somewhat concerned at the high number of voters that were assisted. We noted that Section 1.22 of the Code of Conduct for officials, candidates and their agents, highlights the need for Electoral Officers to satisfy themselves that persons requesting assistance do in fact require such assistance, and that witnesses selected by the voter do not appear to be coercing or imposing themselves on the voter. Though the Electoral Officers at polling stations at which high levels of assisted voting appeared to be taking place appeared satisfied that the voter required assistance, some candidate agents did express concern to the Team that many voters were instructed to request special assistance, and were being directed for whom to vote.

The Team noted that a wide cross-section and a very high number of voters were assisted, ranging from the visually impaired to those that had only

limited mobility. It was not always clear to members of the Team why the voter in question required assistance. In addition, at North-East Point Home for the Elderly, it was suggested that staff were directing frail residents how to vote. While the team was not in a position to investigate or verify such claims directly, such breaches of the Elections Act and Code of Conduct, if true, are serious and official complaints relating to potential coercion of voters as to how to vote should be lodged with, and investigated, by the Electoral Commissioner and other relevant authorities.

The Team also believes that voting aides for the visually impaired should be provided so as to ensure that such voters who wish to vote unaided, are given greater opportunity and ability to do so.

Polling Stations

Polling stations were located in public buildings such as schools and Community Centres. In general, they were easily accessible, adequate in size and well sign-posted, though some locations did present serious challenges to some voters that had difficulty with mobility and access. The locations were the same as those used for local registration of voters, and often but not always the same location used as polling stations at previous elections. The Team suggests that the Electoral Commissioner may wish to examine current locations of all polling stations and seek alternate and more accessible venues for those stations which present such challenges.

Polling Staff

The polling staff, with very few exceptions, were thorough, knowledgeable and experienced in their duties, and efficient and consistent in the application of the polling procedures. We noted that the clear majority of electoral officials were women, though very few Electoral Officials in charge of polling stations were women. The Electoral Commissioner may wish to examine the process of recruiting officials to determine how best to encourage and support more women to assume the senior position. The presence of the police was very discreet.

Voter Turnout and Behaviour

The Team was impressed with the enthusiasm and patience demonstrated by voters of both sexes and all ages, who turned up in large numbers and throughout the day. This was reflected in the impressive official turnout figure of 59,242 (85.3%, including 1,609 or 2.3% invalid ballots) of all registered voters. The Team was impressed by the patience of voters displayed in their willingness to wait for lengthy periods of time in the hot sun, with little complaint. It was noted that the turnout was slightly lower than that recorded in the 2006 Presidential election. For the most part, candidate agents outside polling stations conducted themselves commendably, though one or two

cases of party activists approaching voters in and around the polling stations were reported.

Voter Inducement and Vote Procurement

As noted in Chapter Two, the issue of vote buying and other forms of voter inducement was very prominent in discussions the Expert Team had with stakeholders. Most stakeholders we interviewed either alleged the practices were rampant during this election, as well as in past elections, or claimed that they had heard of its prevalence. Even members of the public we spoke to less formally believed the practices were wide spread. Opposition representatives alleged that a high level of financial inducement was offered to voters on the eve of the main polling day and during election day itself.

The Team noted that parties and candidates have a right to facilitate their supporters turning out to vote, but any harassment of voters or campaigning during polling days and the official cooling off period is in clear breach of electoral laws and regulations. The Team heard detailed allegations by opposition representatives that the ruling party not only provided general assistance to voters to reach polling stations, which is common practice in many countries, but went further in bringing voters to several specific locations in each District to provide money and other gifts as inducement to vote for that party.

As highlighted earlier, the elderly and infirm were alleged to have been driven to the voting station and instructed to request assistance with marking of the ballot. According to the law, this assistance must be provided by an election official. The party supporter who accompanied the voter, however, would be in attendance to witness how the ballot was marked so that a payment could subsequently be made. Drug addicted persons and others who would not otherwise be inclined to vote were also alleged to have been targeted for such vote buying schemes.

In addition, elaborate schemes of vote fraud were described. One alleged scheme purportedly involved the initial removal of a single blank ballot from the voting station by an induced voter. The blank ballot was then to be provided to a collaborator and marked for a particular candidate outside the station. The marked ballot is then provided to another induced voter who attends the voting station and receives their own blank ballot. Within the cover of the voting booth, the marked ballot and the blank ballot are switched and the voter deposits the previously supplied marked ballot and leaves the voting station with his or her blank ballot. The blank ballot is again passed along to the collaborator for marking and so on, and so on. In this way the induced voters can verifiably demonstrate that they have voted for a particular candidate and can receive payment for doing so.

Another alleged scheme involved the use of a mobile phone camera to take a picture of the marked ballot while the induced voter was in the voting booth so that he or she could later provide proof that the ballot was cast for a particular candidate and payment (usually the mobile phone) could be received for doing so.

The Elections Advisory Board specifically discussed the issue of the use of cameras at the voting stations and the decision was made to ban their use. Consequently, signs were placed outside voting stations instructing voters to switch off their mobile phones. Voters were also not allowed to bring purses, bags, rucksacks, etc. into the polling station.

Our election day observations uncovered no evidence of these types of alleged schemes and we were also presented with no other fact based evidence of vote buying in the period leading up to the election or during election day.

The Team was informed that instances of suspected electoral offences of this nature were reported on election day to the Police and Office of the Electoral Commissioner by opposition representatives. Our own election day observations uncovered no direct evidence or observation of these types of alleged practice, though the Team was advised by opposition representatives that evidence of such illegal acts is available and was being gathered at the time of writing.

Though no direct incidents where vote buying or direct influencing of voters was witnessed by any member of the Team, such instances if true are serious breaches of the Elections Act and Code of Conduct for Participants, Political Parties *et al*, and illegal. Such electoral offences should be recorded formally with supportive evidence by those who identified such incidents. and brought to the attention of the relevant authorities for further investigation and action.

Role of Candidate/Party Agents

Each candidate was allowed one agent inside the voting room at a time. In general, the agents who were present observed diligently the entire polling process, from the opening of the poll, noting those who had voted, to the close of poll and the count. In the vast majority of stations, agents of only the candidates of the ruling and main opposition party were present.

Some candidate agents did express their concern and anger that agents were not allowed to carry a copy of the voter register provided to all candidates on 27 April 2011 (nomination day) into the polling stations. In addition, they were not allowed to remove the updated Voter register for the district in which they were present on each polling day. The Political Parties Registration Act and Code of Conduct for Participants, Political Parties *et al* sets out how

the Register is to be shared with political parties and candidates in the Presidential Election, and was discussed in Chapter Two.

Candidate agents are required to use the lists supplied by the Chief Registration Officer and are not permitted to use the lists they were previously given on Nomination Day. Political parties claim that these lists are arranged differently than the lists supplied on Nomination Day. The candidate or party agents are also not permitted to take these lists from the polling station at the end of election day. There does not appear to be a good reason for this restriction on polling day lists.

Secrecy of the Ballot

On the whole, the Team was satisfied that the secrecy of the ballot was maintained throughout the polling process. The seemingly high number of assisted voters did give some cause for concern, and the Electoral Commissioner may wish to give further thought to how best to ensure such voters are provided with the means to vote unaided.

Closure of the Poll & the Count

The closing of the poll was well managed and in most cases occurred at the official closing time of 1900 hours. The affixing of seals on ballot boxes was properly done, and the ballot paper accounts were filled in with figures duly corroborated to the satisfaction of agents.

The procedures for the count are clearly set out in the guidelines provided to election officials. The ballot papers should be sorted into different groups, corresponding with the indication of the candidate for whom the vote was cast, as well as any spoiled ballots. The respective ballots in each group should then be counted, and their number entered in the record sheet. An agent of a candidate had the right to ask for one recount of the ballot. In the presence of the agents, the Electoral Officer was to verify the ballot paper account by comparing the number of ballot papers received as recorded in the ballot paper account, with the number of counted, rejected and unused ballot papers. The ballot papers should then be re-sealed in ballot boxes and Statements of Results prepared. Finally all the ballot boxes containing statutory materials should be sealed, and agents given the right to affix their own seals.

Electoral officials conducting the count at the four polling stations at which members of the Team were present, generally followed this procedure. It was noted that the officials at some polling stations demonstrated great knowledge, experience and efficiency in conducting the count and related procedures, and commanded the respect of all observers and candidate agents present. Disputed ballots regarding the intention of the voters and the validity of some ballots were addressed in a fair and transparent manner, and

to the satisfaction of agents and officials. It was also noted, however, that at other stations, the Electoral Officer appeared unsure of the procedures that obtained. This resulted in the count at these stations progressing at a slow pace, though the results themselves were declared with no complaints.

Section 36(1)(a) of the Elections Act provides for candidate agents to verify the ballot account by signing the relevant form at the conclusion of the count. The candidate agents at some of the counts at which members of the Team were present did not sign the ballot account

The Closing of the Polling Station

Once acceptance and clearance of the faxed results was received from the Electoral Commissioner, the Electoral Officer and staff closed the polling station and sent the sealed box with ballots and sensitive materials under police escort to the Chief Electoral Officer in Mahé.

Announcement of Results

The results were announced shortly before 0100 hours on 22 May 2011 by the Electoral Commissioner in the presence of the winning candidate and his running mate, party officials, diplomats, the media and international observers. Mr James Michel of Party Lepep was declared the winner with 31,966 votes (55.46%, an increase of 1,847 and 1.73% of valid votes cast). Mr Wavel Ramkalawan of the Seychelles National Party obtained 23,879 votes (41.43%, a decrease of 1,747 and 4.28% of valid votes cast); Independent Candidate, Mr Philippe Boullé obtained 956 votes (an increase of 642 and 1.66% of valid votes cast); while Mr Ralph Volcere of the New Democratic Party, who did not stand for office in 2006, obtained 833 and 1.45% of valid votes cast. 1,609 or 2.3% of ballots cast were invalid.

As noted in Chapter Three, the Team welcomed the Code of Conduct agreed by representatives of all candidates that contested the 2011 Presidential election. The Team notes that the Code of Conduct stipulates that candidates should "conduct themselves in such a way as to be magnanimous in victory and gracious in defeat". The Team also noted that all candidates that contested the 2006 Presidential poll attended the official declaration of results, and made speeches that accepted the results whilst identifying concerns in the electoral environment and process, and encouraged further needed improvements in the electoral process.

The Team noted that unsuccessful candidates in the 2011 poll did not attend the official declaration of results, and on 22 May collectively rejected the results of the election publicly at a joint press conference. The opposition cited massive irregularities in the electoral process, with a particular focus on the role of money in influencing directly how a significant number of voters cast their ballot. While drawing attention to earlier observations and

conclusions made in this Report, the Team is not in a position to verify if the allegations made by the opposition in their public statement. The refusal of all opposition candidates to accept the results of the election is indeed a serious matter; we also note that at the time of the Team's departure from Seychelles, the opposition was considering how to take forward their allegations and next steps, which may include a possible boycott of future elections.

The Team encourages the relevant authorities to expedite appropriate investigation of evidence based objections and allegations of breaches of the Elections Act and related regulations.

Chapter Five

CONCLUSIONS AND RECOMMENDATIONS

Our terms of references called on us to observe the preparations for the election; the polling, counting and results process, and the overall electoral environment. We hereby offer our conclusions and recommendations, and hope all relevant stakeholders will receive and consider them in the positive spirit in which they are intended.

Conclusions

As with most elections the Commonwealth has observed, there were positive developments in the electoral process, as well as areas of concern. We believe that the 2011 Presidential Election was well organised and peaceful.

During the campaign, candidates appeared to enjoy general freedom of movement and assembly. We received a number of reports, however, that several billboards of some candidates had been defaced or destroyed, while others had to be removed after they were erected illegally. The Team noted various issues that were highlighted by almost all stakeholders relating to the perceived imbalance in the media coverage of the various candidates before the official campaign commenced, which allegedly continued to a lesser degree once the official campaign began.

The Voter Register appeared to be largely accurate and requisite checks were in place to ensure the requirement for voters to produce appropriate identification documents was observed. On voting days, universal suffrage was provided for and voters turned out in very large numbers across the country. Based on our observation, the count and tabulation processes in polling stations were transparent and conducted fairly, though with a few inconsistencies in the application of relevant procedures.

The technical aspects conducted by the Office of the Electoral Commissioner were efficient, transparent and credible. We conclude that the electoral process was credible and the outcome broadly reflects the wishes of the majority of Seychellois voters. The Team commends the people of Seychelles for their active involvement, and for their belief and participation in the electoral process.

While some fundamental elements of a democratic environment were met, others were not. As Seychelles strives to deepen and consolidate its democratic culture and practice, it needs to address several key issues. These include the establishment of a permanent, independent and adequately

resourced Electoral Commission; a thorough review of the Elections Act and other relevant legislation and procedures, so as to address key gaps and ambiguities in the legal framework related to elections; further reform of the Seychelles Broadcasting Corporation to give full and proper effect to its new fully independent role; reducing substantially the current prohibitive cost of establishing and operating private radio and television stations; and the facilitation of civil society as domestic observers to enhance scrutiny and transparency in the electoral process.

We offer our recommendations for suggested action by the relevant Seychellois authorities to enhance the democratic institutions, practice and culture that govern and shape the electoral process, where required.

Recommendations

- The National Assembly should establish a permanent, independent and adequately resourced Electoral Commission. This Commission should not supplant the Elections Advisory Board.
- A thorough review of the Elections Act and other relevant legislation and procedures should be undertaken, so as to address key gaps and ambiguities in the legal framework related to elections.
- Existing legal requirements to declare campaign expenditures and the declaration of political contributions should be strictly enforced. We further suggest that in addition that the National Assembly consider removing from the Elections Act the specific exemption from reporting the identity of the person or source of the contribution and the person in respect of whom the expense was incurred.
- In the interests of transparency in the use of funds that are used to contest elections, it is suggested that the election law be amended to include a requirement for parties and candidates to publicly disclose the source of political contributions, as well as the amount. The National Assembly should consider limiting the amount of contributions that can be received or the amount of funds that can be spent, or both.
- In the interests of reducing outside influence on the electoral affairs of Seychelles, the Assembly should consider restricting the source of political contributions to persons eligible to vote in Seychelles elections. In order to improve the ability of the Electoral Commissioner to enforce campaign finance laws, reports required to be filed should first be audited by a professional auditor and the Electoral Commissioner should be given additional resources to review and investigate suspect reporting.
- The period of list inspection and revision should be extended and streamlined to permit more time for voters to verify their information and

to have it corrected. It is also recommended that political party and candidate agents be permitted to retain the district lists given to them on polling day.

- We urge the Electoral Commissioner to consult with a wide range of election stakeholders before preparing the annual reports submitted annually to the National Assembly and following elections, and that he use the occasion of these reports as an opportunity to make substantive recommendations to amend the elections law to further enfranchise voters and to improve the accessibility, administration of elections, and enforcement of election laws.
- The Elections Act should be amended with regard to the nomination process; the Elections Act should also be reviewed broadly to ensure that it contains fair, complete and satisfactory electoral rules and procedures, as well as to ensure there is accuracy and internal consistency within the law.
- The Elections Act should be amended to provide for a longer period for the submission of nomination papers in order that they may be properly verified by the Chief Electoral Officer. It is also recommended that the form and requirements of the Nomination Paper be also prescribed in law.
- Adequate funding should be provided to the Electoral Commissioner so that there can be strict enforcement of the elections laws, particularly with regard to the enforcement of penalties for electoral offences and fraudulent acts, including voter inducement.
- The Elections Act should be amended to give the Electoral Commissioner a mandate to inform voters of their right to vote, the rights of citizens to participate in the democratic process, the rules regarding elections, and the voting process.
- Voting aides for the visually impaired should be provided so as to ensure that such voters who wish to vote unaided, are given greater opportunity and ability to do so. The Electoral Commissioner may wish to examine current locations of all polling stations and seek alternate and more accessible venues for those stations which present such challenges.
- Further reform of the Seychelles Broadcasting Corporation should take place so as to give full and proper effect to its new role, so as to operate independently of the State and other bodies, persons or political parties. In addition, we suggest that the current prohibitive cost of establishing and operating private radio and television stations be reduced substantially.
- Measures to strengthen the existing Public Service Commission and Public Service Appeals Board should be implemented to allay persistent fears

and suspicions that employment and promotional prospects may be influenced by perceived political affiliations.

- In view of the critical role that domestic observation plays in the democratic process, we urge the Electoral Commissioner and civil society to work together to agree on the modalities and institutional framework that would facilitate domestic electoral observation.
- We encourage the speedy implementation of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) into domestic law, and the promotion of affirmative action and proportional representation in the holding of public office.
- Furthermore, the Government may wish to consider how best to integrate and mainstream gender issues into constitutional and electoral reforms so as to reaffirm the principles of non-discrimination, equality, affirmative action, women's right to freedom, democratic processes and security.

Acknowledgements

We are grateful to the Commonwealth Secretary-General, Kamallesh Sharma, for inviting us to form this Commonwealth Expert Team, and thereby allowing us to make a contribution to the ongoing consolidation of democracy in Seychelles.

We wish to express our sincere thanks and appreciation to all stakeholders in Seychelles that have shared their views and insights with us. This enabled us to develop an understanding of the background to the election, and the electoral process itself. We express our particular appreciation to the Electoral Commissioner, Hendrick Gappy, and his staff for their excellent co-operation and assistance that facilitated our work greatly.

Above all, we express our appreciation to the people of Seychelles whose warmth and friendliness made us feel welcome. We hope that our presence and work will be of benefit to them.

ANNEX 1: Biographies of CET Members

Dr. the Hon Julian R Hunte OBE, SLC (St Lucia)

Dr. the Hon Julian Hunte is the current President of the West Indies Cricket Board, and is active in the private sector as Chairman and Chief Executive of the Julian R Hunte Group of Companies. He has previously held several of key leadership roles in St Lucia and internationally. He is a former Minister of External Affairs, International Trade and Civil Aviation of St Lucia, Leader of the St. Lucia Labour Party, Leader of the Opposition, a Senator and Member of Parliament.

Dr Hunte has also served as President of the United Nations General Assembly in 2003-2004 and was elected in 2008 as Chairman of the Council of Presidents of the United Nations General Assembly. Dr Hunte has served twice as Permanent Representative of St Lucia to the United Nations, and the UN Special Committee on Decolonization respectively. He also provided leadership for standing bodies of the Caribbean Community (CARICOM), including as Chair of the Council for Foreign and Community Relations (COFCOR). Dr Hunte served as founder and Chairman of the Standing Conference of Popular Democratic Parties of the Eastern Caribbean (SCOPE); an alliance of political parties of Eastern Caribbean States having common aims and ideologies for national political development.

In 1979, Dr Hunte was awarded the Order of the British Empire (OBE), in recognition of his dedicated service to the Government and people of St Lucia. His Holiness Pope John Paul II conferred on Dr. Hunte the Papal Honour of the Knight of Grand Cross Piam in appreciation of his inclusive approach to the work of the United Nations General Assembly. In 2005, his country's highest honour, The St Lucia Cross, was conferred on Dr Hunte for distinguished and outstanding service. In the same year, Dr Hunte received an honorary degree of Doctor of Letters from the University of Sheffield in the United Kingdom.

Lorne R. Gibson (Canada)

Lorne Gibson is a professional election administrator in Canada. From 2006 to 2009, he was the Chief Electoral Officer for the Province of Alberta. In this role, he was an independent legislative officer and reported directly to the Legislative Assembly of Alberta. He administered Alberta's 27th provincial general election in March 2008. Before that he was the Deputy Chief Electoral Officer with Elections Manitoba from 1998 to 2006 and supervised two general elections and numerous by-elections in the Province of Manitoba. Lorne Gibson is currently consulting in the fields of electoral management and

research. He has a sound knowledge of elections law, voter registration systems, campaign finance, and election management information systems.

Priscilla M Achakpa (Nigeria)

Ms Priscilla M Achakpa is the Vice-Chair of Transition Monitoring Group (TMG), the biggest NGO Coalition in Nigeria that focuses on election processes including Domestic Election Observation. She is also the Executive Director and Co-founder, Women Environmental Programme, Nigeria. WEP is one of the leading women NGOs in Nigeria that has worked extensively on gender and environmental issues relating to research, advocacy and lobbying for pro-poor policies inclusivity, human rights, livelihoods, capacity building of the grassroots and climate change.

Josephine Teakeni (Solomon Islands)

Vois Blong Mere Solomon is a national women's media NGO which Josephine Teakeni has led since 2002. She is a longstanding advocate for women's rights and a community para-legal trainer and was one of 26 women who contested parliamentary elections in 2006. *She is also Secretary to the Media Association of Solomon Islands.*

Mr Idrisa Haji Jecha (Zanzibar, Tanzania)

Mr Idrisa Jecha joined the Zanzibar Electoral Commission in 2000 as a Information and Public Relation Officer. Currently he is serving as Acting Director of Elections. Before joining the Commission he was Assistant Chief News Editor at Radio Zanzibar. He has observed elections in Seychelles and Zambia in 2006 and has undertaken numerous courses related to electoral practice.

ANNEX 2: Preliminary Statement



Commonwealth Expert Team Seychelles Presidential Election 19 - 21 May 2011

PRELIMINARY STATEMENT

Dr. the Hon. Julian R Hunte SLC, OBE Chairperson of the Commonwealth Expert Team

Following an invitation from the Electoral Commissioner to send observers to Seychelles for the 2011 Presidential Election, the Commonwealth Secretary-General constituted a Commonwealth Expert Team comprising five experts. The Team was supported by three officials from the Commonwealth Secretariat. I am honoured to have been asked to Chair the Team, which has been present in the country since 14 May 2011.

During this period we have met with the Electoral Commissioner, members of the Elections Advisory Board, political parties and presidential candidates, the Minister of Foreign Affairs, the Liaison Unit for Non-Government Organisations (LUNGOS), Commonwealth High Commissioners, the Media Commission, the Seychelles Broadcasting Corporation and private media, religious leaders, other observer teams and the Seychellois public, and discussed a number of issues relevant to the overall electoral process. In addition to meeting different stakeholders and interested parties, the Team also studied documentation from various sources.

Over the three days of voting, members of the Team reported from all 25 Electoral Areas where we observed the voting, counting and tabulation processes. We also met with electoral officials, other international observers and candidate polling agents other stakeholders in order to compile a more comprehensive picture of the conduct of the process.

Management of the Electoral Process

The Presidential Election was conducted in a peaceful atmosphere. During the campaign, candidates appeared to enjoy general freedom of movement and assembly. On voting days, universal suffrage was provided for and voters turned out in very large numbers across the country.

The Office of the Electoral Commissioner was well prepared for the elections and exhibited a high standard of organisation. Electoral officials appeared to have worked professionally and diligently in their preparation for polling days, and in the management of the voting and counting processes. Candidate representatives were present at polling stations.

The Voter Register appeared to be largely accurate and requisite checks were in place to ensure the requirement for voters to produce appropriate identification documents was observed. Based on our observation, the count and tabulation processes in polling stations were transparent and conducted fairly, though with a few inconsistencies in the application of relevant procedures.

Election Campaign and Political Participation

The candidates adopted different campaign strategies. The candidate of Parti Lepep was the only one that held campaign rallies. The campaign among other candidates was conducted largely through door-to-door canvassing, party political broadcasts provided for through the public broadcaster, in the private print media and on billboards. No candidate reported any impediments to their activities. The campaign was largely peaceful. We received a number of reports, however, that several billboards of some candidates had been defaced or destroyed, while others had to be removed after they were erected illegally. The Team noted various issues that were highlighted by almost all stakeholders relating to the perceived imbalance in the media coverage of the various candidates before the official campaign commenced, which allegedly continued to a lesser degree once the official campaign began.

The Team noted that one prospective independent candidate, Mr Viral Dhanjee, faced legal and administrative challenges, which resulted in his non-participation as a candidate, which is of particular concern. This case is a matter before the Court of Appeal and the Team is therefore not in a position to comment substantively on it.

Conclusion

As with most elections the Commonwealth has observed, there were positive developments in the electoral process, as well as areas of concern. We believe that the 2011 Presidential Election was well organised and peaceful. The technical aspects conducted by the Office of the Electoral Commissioner were efficient, transparent and credible. We conclude that the electoral process was credible and the outcome broadly reflects the wishes of the majority of Seychellois voters. The Team commends the people of Seychelles for their active involvement, and for their belief and participation in the electoral process.

While some fundamental elements of a democratic environment were met, others were not. As Seychelles strives to deepen and consolidate its democratic culture and practice, it needs to address several key issues. These include the establishment of an independent Electoral Commission; a thorough review of the Elections Act and other relevant legislation and procedures, so as to address key gaps and ambiguities in the legal framework related to elections; further reform of the Seychelles Broadcasting Corporation to give full and proper effect to its new role as a public service broadcaster, with equitable access to alternative political viewpoints outside the limited campaign period; and, finally, reducing substantially the current prohibitive cost of establishing and operating private radio and television stations.

This statement presents our preliminary views and findings. We are in the process of completing our Final Report. This will contain our final conclusions, as well as our detailed recommendations for suggested action by the relevant Seychellois authorities to enhance the democratic institutions, practice and culture that govern and shape the electoral process, where required.

We will on our departure from Seychelles on 26 May submit our Report to the Commonwealth Secretary-General, who will then transmit it to the candidates and other stakeholders. The Report will subsequently be released to all Commonwealth Governments and to the public on the Commonwealth Secretariat website in the coming weeks.

We are grateful to the Commonwealth Secretary-General, Kamalesh Sharma, for inviting us to form this Commonwealth Expert Team, and thereby allowing us to make a contribution to the ongoing consolidation of democracy in Seychelles.

We wish to express our sincere thanks and appreciation to all stakeholders in Seychelles that have shared their views and insights with us. This enabled us to develop an understanding of the background to the election, and the electoral process itself. We express our particular appreciation to the Electoral Commissioner, Hendrick Gappy, and his staff for their excellent co-operation and assistance that facilitated our work greatly.

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