

SEYCHELLES MEDIA COMMISSION ACT, 2010

(Act 36 of 2010)

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SEYCHELLES MEDIA COMMISSION ACT, 2010

(Act 36 of 2010)

I assent

J. A. Michel
President

30th December, 2010



AN ACT to establish a Seychelles Media Commission for the purpose of preserving the freedom of media and of maintaining and improving the standards of journalism in Seychelles.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Seychelles Media Commission Act, 2010 and shall come into operation on such date as the President may, by notice in the Official Gazette, appoint.

Short title

Interpretation

2. In this Act —

“Chairperson” means the chairperson of the Commission;

“Commission” means the Seychelles Media Commission established under section 3;

“Member” means a Member of the Commission;

“Minister” means the Minister with the portfolio responsibility for media affairs;

“prescribed” means prescribed by regulations made under this Act.

PART II - ESTABLISHMENT OF THE MEDIA COMMISSION

Establishment of the Commission

3.(1) There shall be established a Commission by the name of the Seychelles Media Commission.

(2) The Commission shall be a body corporate.

(3) Except as otherwise provided in this Act or by any other law not inconsistent with the Constitution, the Commission shall not be subject to direction or control of any person or authority in the performance of its functions.

Composition of the Commission

4.(1) The Commission shall consist of a Chairperson and seven other members, all of whom shall be appointed by the President.

(2) Five of the members of the Commission shall be appointed by the President from candidates proposed by—

(a) the Seychelles Media Association or such other body as may for the time represent journalists and media professionals;

- (b) the National Assembly;
- (c) the Judiciary;
- (d) the Department for the time being responsible for Information;
- (e) the Liason Unit for Non-Governmental Organisations (LUNGOS).

(3) The two other members and the Chairperson, who shall be persons of good standing, shall be appointed by the President.

(4) The Chairperson shall be the Chief Executive Officer of the Commission.

(5) The Chairperson shall be a person with wide experience as a media practitioner or have a strong legal or administrative background.

(6) No working journalist who owns, or carries on the business or management of, any newspaper or other media shall be eligible for appointment as Chairperson of the Commission.

(7) The Chairperson and other members shall not be officers having judicial or legislative functions pursuant to articles 119 and 78 of the Constitution, respectively.

5. The President shall publish the names of the members of the Commission in the Official Gazette, and every appointment shall take effect from the date on which it is so notified.

Notification of appointment

6.(1) Save as otherwise provided in this section, the Chairperson and other members shall hold office for a period of three years and shall be eligible for reappointment.

Term of office and removal of members

(2) (a) The Chairperson and other members may resign by giving notice in writing to the President.

Upon such resignation being accepted by the President, the Member shall be deemed to have vacated office.

(b) The Chairperson and other members may be removed from office by the President if any of them —

(i) ceases to be a citizen of Seychelles;

(ii) is adjudged insolvent;

(iii) is convicted of any offence involving moral turpitude; or

(iv) is unfit to continue in office by reason of infirmity of the body or mind.

(3) Any Member who is absent for more than three consecutive meeting without the approval of the Chairperson shall be deemed to have his vacated office.

(4) Any vacancy arising under subsections (2) and (3) or otherwise shall be filled as soon as possible and the member so appointed shall hold office for the remaining period for which the member vacating office would have held office.

Members' emoluments

7.(1) The Chairperson shall be a full-time officer employed on terms and conditions as may be determined by the President.

(2) The other Members shall be paid such allowances as may be determined by the Minister.

Committees of Commission

8.(1) For the purpose of performing its functions the Commission may constitute from among its Members such committees for general or special purposes as it may deem necessary, and every committee so constituted shall perform the functions assigned to it by the Commission.

(2) The Commission shall have the power to co-opt as

members of any committee constituted under subsection (1) such other number of persons, not being Members of the Commission, as it thinks fit.

(3) Any such person shall have the right to attend any meeting of the committee on which the person is co-opted and to take part in the discussions thereat, but shall not have the right to vote.

9.(1) The Commission or any committee thereof shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be agreed by the Commission.

Meetings of the Commission and Committees

(2) The quorum for a meeting of the Commission shall be three.

(3) The Chairperson may delegate any member to chair a meeting of the Commission in the Chairperson's absence.

10. No act or proceedings of the Commission shall be deemed to be invalid by reason only of the existence of any vacancy in, or any defect in the constitution of, the Commission.

Act valid despite vacancy, etc.

11.(1) The Commission may appoint such employees as it may think necessary for the efficient performance of its functions under this Act.

Staff of the Commission

(2) The terms and conditions of service of the employees shall be determined by the Commission.

12. All orders and decisions of the Commission shall be authenticated by the signature of the Chairperson or any other member authorised by the Commission, and other instruments issued by the Commission shall be authenticated by the signature of the Chairperson, any other officer of the Commission or an employee of the Commission as may be agreed upon by the Commission.

Authentication of orders, etc.

**PART III - POWERS AND FUNCTIONS OF
THE COMMISSION**

Objects and
functions of the
Commission

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

(2) The Commission may, in furtherance of its objects—

- (a) provide an independent arbitration medium between different types of media organisations and between members of the public and media organisations;
- (b) promote the independence of the print and electronic media;
- (c) formulate in consultation with the Seychelles Media Association, a Code of Conduct for publishers of newspapers, radio and television broadcasters, news agencies, publishers of online publications including blogs, particularly those emanating from internet servers hosted in Seychelles, and journalists, and publish the Code of Conduct as prescribed;
- (d) monitor adherence to the Code of Conduct and require compliance by all concerned;
- (e) monitor compliance by all media of constitutional and legal obligations in force in Seychelles in respect of media freedom and expression;
- (f) monitor any developments likely to restrict the dissemination of information, including expression of opinions on matters of public

interest and importance, and assist in resolving them;

- (g) defend the constitutional right of the citizens to accurate, truthful and timely information;
- (h) assist journalists and broadcasters in developing and maintaining high standards of integrity in the collection and dissemination of news and information in and about Seychelles;
- (i) assist and encourage the interaction between local media organisations and foreign media organisations, including training institutions, with the object of improving the standard of journalism in Seychelles;
- (j) receive complaints from members of the public relating to any infringement of the individual's right to privacy by journalists or agents of media organisations and sanction journalists or media organisations according to law;
- (k) promote a proper functional relationship among all classes of persons engaged in print and electronic media in Seychelles;
- (l) promote the development of privately-owned print and broadcasting media;
- (m) undertake such other activities within its mandate as may be assigned to the Commission by the Government including but not limited to—
 - (i) reviewing of existing legislation governing broadcasting and the print media and making recommendations to the Government with a view to bringing them in line with the Constitution and current trends as may be appropriate;
 - (ii) reviewing and making recommendations

to the Government on licence applications to open radio or television stations, or to publish newspapers and similar print publications;

- (iii) maintaining of a national database of media practitioners and institutions.

Power of
sanction

14.(1) Where on receipt of a complaint made to it or where the Commission has reason to believe that a publisher or journalist of a newspaper or radio or television broadcaster, or news agency has offended against the standards of journalistic ethics or decency as embodied in the Code of Conduct, or that an editor or working journalist has committed any professional misconduct, the Commission may, after giving the publisher of the newspaper, broadcaster, news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided in the Schedule, and if it is satisfied that it is necessary so to do, may in writing warn or admonish the publisher, broadcaster, news agency, editor or journalist, as the case may be, and may publicly express disapproval of the conduct of the editor or the journalist and order such action as the Commission considers appropriate.

(2) The Commission may decide not to take action on a complaint if in its opinion there is no sufficient ground for holding an inquiry.

(3) If the Commission is of the opinion that it is necessary or expedient in the public interest so to do, it may require any publisher of a newspaper or broadcaster to give publicity through the newspaper or other medium in such manner as the Commission thinks fit, of any particulars relating to any inquiry which it is conducting.

(4) Nothing in this section shall be deemed to empower the Commission to inquire into any matter in respect of which any proceeding is pending in a court of law.

General powers
of the
Commission

15.(1) For the purpose of holding any inquiry under this Act, the Commission shall, subject to subsection (2), have the same powers as a commission of inquiry appointed under the

Commissions of Inquiry Act (Cap 39) and sections 12, 13 and 14 of that Act shall *mutatis mutandis* apply to the Commission.

(2) The Commission shall not compel any publisher of a newspaper, broadcaster, news agency, editor or journalist to disclose the source of any news or information published or broadcast by that newspaper or broadcaster or received or reported by that news agency, editor or journalist.

(3) The Commission may, if it considers it necessary for the purpose of carrying out its objects or for the performance of any of its functions under this Act, make such observations, as it may think fit, in any of its decisions or reports, in respect of the conduct of any person or public officer.

16. The Government shall make available to the Commission by way of grants such sums of money as the Government considers necessary for the performance of the functions of the Commission under this Act.

Payments to the
Commission

17.(1) The Commission shall cause all fees collected by it, all such sums as may from time to time be paid to it by the Government and all grants and advances made to it by any person or organisation to be credited to its account and all payments by the Commission to be made therefrom.

Funds of the
Commission

(2) All moneys belonging to the Commission shall be deposited in such banks or invested in such manner as may be agreed between the Commission and the Minister.

18. The Commission shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure, and a copy thereof shall be forwarded to the Minister.

Budget

19. The Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report, giving a summary of its activities during the previous year, and a general review of the functioning of mass media during the preceding year and copies thereof, together with the statement of accounts audited under section 20, shall be

Annual report

submitted to the Minister and to the Minister responsible for Finance. The Minister shall cause the same to be presented to the National Assembly soon thereafter.

Audit of
accounts

20. The accounts of the Commission shall be audited by the Auditor General in accordance with article 158 of the Constitution.

PART IV - MISCELLANEOUS

Protection of
action taken in
good faith

21.(1) No suit or other legal proceeding shall lie against the Commission or any member thereof or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against any publisher of a newspaper or broadcaster in respect of the publication or broadcasting of any matter under the authority of the Commission.

Certain Penal
Code
provisions
apply

22. Every member of the Commission and every officer or other employee appointed by the Commission shall be deemed to be employed in the public service for the purposes of sections 91 to 96 of the Penal Code and those sections shall apply to them.

Power to
make
regulations

23.(1) The Minister may make regulations to carry out the principles and provisions of this Act as recommended by the Commission.

(2) In particular and without prejudice to the generality of the subsection (1), such regulations may provide for amending the Schedule.

SCHEDULE

Section 14

Procedure for Inquiry

Definitions

1. In this Schedule—

(a) "Committee" means a committee constituted by

the Commission under section 8(1) to inquire into any matter or complaint under the Act;

- (b) "Commission" means the Seychelles Media Commission constituted under the Act;
- (c) "complainant", in the case of complaints under section 14(1), means any person making a complaint to the Commission regarding a publisher of a newspaper, broadcaster, news agency, editor or other working journalist, and in the case of complaints relating to other matters, means a person making a complaint to the Commission in respect of any matter which the Commission has jurisdiction to entertain, examine and pronounce its views upon; and
- (d) "matter", in the case of complaints under section 14(1), means an article, news item, news report, or other matter which is published by a newspaper or broadcast by any other medium or transmitted by a news agency by any means whatsoever and includes a cartoon, picture, photograph, strip or advertisement which is so published or broadcast, and, in the case of complaints relating to other matters, "matter" relates to an action or inaction said to impinge upon the freedom of the media.

2.(1) A person who makes a complaint to the Commission in respect of the publication or non-publication of any matter in any newspaper, broadcasting or non-broadcasting of any matter by any broadcaster or transmission or non-transmission of any matter by a news agency, under section 14(1) shall file the complaint in duplicate with sufficient copies for the respondents listed and shall —

Content of a
complaint under
Section 14(1)

- (a) furnish the name and address of the publisher of the newspaper, broadcaster, news agency, editor or other working journalist against which or whom the complaint is made; and in cases where the complaint relates to the publication of any matter in a newspaper, broadcasting of any

matter by any broadcaster or to the transmission of any matter by a news agency, forward along with the complaint a copy of the matter complained of in original or a self attested copy thereof and such other particulars as are relevant to the subject-matter of the complaint; and where the complaint is in respect of non-publication, non-broadcasting or non-transmission of matter, the original or a self attested copy of the matter the non-publication, non-broadcasting or non-transmission of which is complained of;

- (b) state in what manner the publication, non-publication, broadcasting, non-broadcasting, transmission or non-transmission of the matter complained of is objectionable within the meaning of section 14(1);
- (c) where the complaint is that an editor or a working journalist has committed any other professional misconduct, the complainant shall set out clearly in detail the facts which according to the complainant justify the complaint and the provisions of clause (a) above shall also apply to such complaint;
- (d) in every case —
 - (i) place all other relevant facts before the Commission;
 - (ii) lodge the complaint with the Commission within three months.

(2) The complainant shall also make a declaration to the effect —

- (a) that to the best of the complainant's knowledge and belief the complainant has placed all the relevant facts before the Commission and that no proceedings are pending in any court of law in respect of any matter alleged in the complaint;

- (b) that the complainant shall inform the Commission forthwith if during the inquiry any matter alleged in the complaint becomes the subject matter of any proceeding in a court of law.

3.(1) Where a complainant does not comply with the requirements of paragraph 2, the Chairperson may return the complaint by registered post asking the complainant to bring it in conformity with such requirements and re-present it within such time as the Chairperson may specify.

Return of
complaint

(2) Where a complainant fails to comply with the requirements within the period specified, the Chairperson may decide to close action in the matter and so inform the Commission at its next meeting.

(1) Subject to subparagraph (2), as soon as possible, and in any case not later than forty-five days from the date of receipt of a complaint complete in all respects, the Chairperson shall cause a copy thereof to be sent to the publisher, broadcaster, news agency, editor or other working journalist against whom the complaint has been made along with a notice requiring the publisher, broadcaster, news agency, editor or other working journalist, as the case may be, to show cause why action should not be taken under section 14.

Issue of
Notice

(2) The Chairperson may decide not to issue a notice under subparagraph (1) to the publisher, broadcaster, news agency, editor or working journalist where, in the Chairperson's opinion, there is no sufficient ground for holding an inquiry. The Chairperson shall inform the Commission at its next meeting of the reasons for the Chairperson's decision not to issue a "show cause" notice and it may pass such order as it may think fit.

(3) The notice under subparagraph (1) shall be sent to the publisher, broadcaster, news agency, editor or other working journalist concerned by registered post or recorded delivery to the address furnished in the complaint.

Filing of written statement

5.(1) The person against which or whom the complaint is made may, within fourteen days from the date of service of the copy of the complaint and notice under paragraph 4 or within such further time as may be granted by the Chairperson in this regard, submit a written statement in reply to the complaint.

(2) A copy of the written statement when received shall be forwarded to the complainant for information.

(3) After receipt of the complaint or written statement, the Chairperson may, if necessary, call for any further information either from the complainant or the respondent as the case may be, in order to clarify matters appearing in the complaint or written statement and in doing so, may call for such documents or further statements as the Chairperson might consider necessary. All the documents and statements called for by the Chairperson shall form part of the record and shall be placed before the Committee at the time of the inquiry.

Power to call for additional particulars, etc.

6. The Committee may, after considering the complaint and the written statements, call for such additional particulars or documents relevant to the subject matter of the inquiry as it may consider necessary from either one or both of the parties.

Rejection of complaint of the same nature previously inquiry into

7. Where at any time in the course of the inquiry into a complaint it appears to the Committee that the subject-matter of the complaint is substantially the same as, or has been covered by any former complaint dealt with by the Commission under the Act, the Committee may reject the complaint. But if the circumstances are so different that it is just and fair to hold an inquiry, or is a repetition of an offence, the Committee shall hear the complainant, if the complainant desires to be heard and also if the Committee considers it necessary, the publisher, broadcaster, news agency, editor or other working journalist, as the case may be, and make its recommendation to the Commission which may pass such order as may be considered necessary and the same shall be duly communicated to the parties.

8.(1) Notice of the time, date and place of hearing shall be served on the complainant as well as on the respondent by registered post. In the inquiry before the Committee the parties shall be entitled to adduce relevant evidence, oral or documentary, and to make submissions in support of their contentions.

Inquiry by the
Committee

(2) At the close of the inquiry, the Committee shall make a report of its finding on the allegations contained in the complaint together with its reasons and submit the record of the case to the Commission.

9.(1) The Commission shall, after perusing the record of the case, pass order giving its decision or it may remit the case to the Committee for such further inquiry as the Commission may deem necessary and after receipt of its report dispose of the case.

Decision by
the
Commission

(2) Every case shall be determined by a majority of votes of the members of the Commission present and voting, and in the event of the votes being equal, the Chairperson shall have a casting vote and shall exercise the same.

(3) The order of the Commission shall be communicated in writing to the parties to the case.

10. In any inquiry under this Act, the editor or other working journalist or persons holding similar positions with a broadcaster or any authority including government, or the publisher or broadcaster through its editor or person holding a similar position with the broadcaster may appear in person, or with the permission of the Committee or Commission as the case may be, by an attorney-at-law or a duly authorised representative.

Appearance of
parties, etc.

No member of the Committee shall vote or take part in the discussion of, and no member of the Commission shall vote or take part in the discussion of, any complaint coming up

Restriction on
power of
members to
discuss and vote
in certain cases

for consideration at a meeting of the Committee or the Commission if the case is one in which that member is personally involved or has any direct or indirect interest or in which that member is interested professionally on behalf of a client or as an agent or representative of any newspaper, broadcaster, news agency, editor or other working journalist, as the case may be.

Power to act on
own initiative

12. The Chairperson may issue notice or take action in respect of any matter which falls within section 14(1) or in respect of or relating to any matter falling under section 13(2) and thereupon the procedure prescribed by paragraph 5 onwards shall be followed as if it were a complaint under paragraph 2.

Procedure in
respect of
complaints
etc., under
section 13

13.(1) The procedure prescribed by this Schedule in respect of complaints under section 14(1) shall apply, as far as may be, to complaints or representations received by the Commission with regard to any subject falling within the provisions of section 13 provided that a person making such a complaint shall give particulars of the respondent such as name, designation and address and—

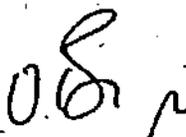
- (a) state how the action or inaction of the respondent amounts to curtailment of the freedom of the media or a breach of the Code of Conduct and provide documentary evidence in support;
- (b) furnish a copy, if any, of the letter written to the respondent drawing the respondent's attention to the grievance and any reply received;
- (c) ensure that the complaint is made within three months from the date of the act complained of; and
- (d) make the declaration prescribed in paragraph 2(2).

(2) On receipt of such complaint, complete in all respects, the Chairperson shall cause a copy thereof to be sent to the person against whom the complaint has been made along with a notice for a statement in reply as to why the matter does not warrant an observation under section 15 (3) of the Act. The procedure specified in paragraphs 8 to 11 shall thereafter be adopted.

4. The Commission or the Committee shall have the power to regulate their own procedure in respect of any matter of urgent national importance or for which no provision or adequate provision is made in this Schedule and shall also have the power in appropriate cases to hold inquiries in camera provided that the procedure adopted under this paragraph shall be communicated to the parties affected.

Procedure in
matters not
provided for

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 21st December, 2010.



Veronique Bresson
Clerk to the National Assembly