THE NATIONAL ASSEMBLY OF SEYCHELLES

REPORT OF THE INTERNATIONAL AFFAIRS COMMITTEE

ON THE

Extradition Agreement between the Government of the French Republic and the Government of the Republic of Seychelles

(Submitted for Ratification as per Article 64 (4) of the Constitution)

The Committee has considered this Convention and presents its report thereon to the 7th Assembly. This is the International Affairs Committee's second special report on treaties for the year 2024, laid before Parliament in accordance with Article 64 (4) of the Constitution of the Third Republic of Seychelles.

The International Affairs Committee (IAC) has the parliamentary responsibility for scrutinizing all international agreements submitted to the National Assembly by Recommendation of the President of the Republic of Seychelles.

The report addresses this Convention that has been reviewed and considered at the meeting of the IAC on *Tuesday 25th June 2024* with a delegation from the Legal Affairs Unit of the Foreign Affairs Department and the Attorney General Office by:

Ms. Sandra Michel, *Legal Advisor and,*
Ms. Martina Ceccato, *Third Secretary*
Mrs. Nissa Thompson, *State Counsel*

THE INTERNATIONAL AFFAIRS COMMITTEE is mandated to work closely with the Ministry of Foreign Affairs, other governmental and non-governmental organizations on international affairs, peace, security, and defence and contribute thereon as and when necessary; maintain existing and establish new ties with foreign parliamentary organizations of interest; and perform any other tasks as may be assigned by the National Assembly

Powers
The Committee is a Standing Sessional Committee, the powers of which are set out in the National Assembly Standing Orders, 2020, principally, SO 88-92.

Committee Staff
The Committee is assisted by the following Parliamentary Staff of the Secretariat:
Ms. Emma Didon (Secretary) and Mr. Darel Atala (Secretary Assistant).

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The following Members of the International Affairs Committee undersigned, submit this Report dated 11th July 2024:

Hon. Waven William
Chairperson

Hon. Wavel Woodcock
Vice-Chairperson

Hon. Egbert Aglae
Member

Hon. Kelly Samynadin
Member

Hon. Rachel Spiro
Member

Hon. Philip Monthy
Member

Hon. Philip Arissol
Member

1 BACKGROUND AND SYNOPSIS OF THE AGREEMENT AND CONTENTS

1.1 The first negotiations and exchange of texts on the Agreement between the parties began in 2019. With Covid-19 following immediately after, negotiations continued via video conference and were held primarily in French. In 2021, the Extradition text with France was finalised in addition to the Agreement on Mutual Assistance in Criminal Matters.

1.2 A Protocol on the agreements were signed in 2021 following the end of negotiations along with initialed pages of the original text in French. Much time was taken for the matter to be brought to the National Assembly, however, because the French were producing the translated version which Seychelles insisted upon as the French version would not be able to be used by the Seychelles courts in cases of extradition. The English version was ready in 2023.

The below is a summary of the Articles of the Agreement:

Article 1 Principle of Extradition – this article lays down what extradition entails, under this agreement.

Article 2 Extraditable Offences – here, the conditions for extraditable offences within the agreement are set.

Article 3 Mandatory Grounds for Refusal of Extradition – provides for the instances where extradition shall not be granted including on account on race, religion, ethnicity, nationality, social background and ideology.

Article 4 Discretionary Grounds for Refusal – provides for the discretionary instances where extradition may be refused by the Parties.

Article 5 Capital Punishment and Punishments Contrary to the Public Order in the Requested Party – provides for the refusal of extradition in cases where the offence is punishable by capital punishment or any punishment contrary to public order in Requested Party.

Article 6 Extradition of Nationals – informs on the inability to extradite a person with the nationality of the Requested Party and sets an alternative solution other than extradition.

Article 7 Procedure – sets out that the procedures for provisional arrest, extradition and transit will be governed by the law of the Requested Party.

Article 8 Transmission of Requests and Supporting Documents – provides for the procedures and instructions involved in transmission which is stipulated to be through diplomatic channels.

Article 9 Supplementary Information – provides for the Requested Party to request the necessary supplementary information when information or documents sent form the Requested Party are found to be insufficient or contains irregularities.

Article 10 Authentication of Documents – states that extradition requests and supporting documents must bear the signature of and seal of the requesting authority.

Article 11 Languages to be used – states that Requesting Party must translate extradition request and any supporting documents into the official language of the Requested Party.

Article 12 Decision and Surrender of the Person – addresses the provisions for the decision and surrender of the person including, timely communication of the Requesting Party's decision, reasons for total or partial rejection and the logistics for the surrender of the person when the request is accepted.

Article 13 Postponed or Temporary Surrender – provides for the grounds of postponement of the surrender of the person sought or for their temporary surrender such in cases where there are ongoing proceedings against the person or if the person is serving a sentence.
Article 14 Handing over of Property – provides for the conditions and grounds for the handing over of property from the Requested Party to the Requesting Party.
Article 15 Rule of Speciality – provides for the exceptions to the circumstance that states shall not be prosecuted, sentenced or detained to enforce a measure of deprivation of liberty or to enforce a sentence for offences committed prior to extradition.
Article 16 Re-extradition to a Third State – provides that re-extradition to a third State shall only be granted with the consent of the Party that granted the extradition.
Article 17 Provisional Arrest – makes provisions for the conditions for request of provisional arrest of the person sought by the Requested Party.
Article 18 Consented Extradition – provides for measures taken in cases where the person sought consents to being surrendered by the Requesting Party.
Article 19 Information of the Results of Extradition – provides that the Requesting party shall inform the Requested Party on the results of the criminal prosecutions against the extradited person, the execution of their sentence, or their re-extradition to a third State upon request by the Requested Party.
Article 20 Transit – makes provisions for the granting of transit of a person through the territory of Parties which the person is not a national of, to be done via diplomatic channels.
Article 21 Conflicting Requests – provisions are made for instances where extradition is requested concurrently by one of the Parties and by other States either for the same offence or for different offences.
Article 22 Personal Data Protection – sets the conditions in which transferred personal data requested under this Agreements may or not be used by the relevant Party.
Article 23 Expenses – sets out which parties incur costs at different stages and circumstances of extradition.
Article 24 Relations with Other Treaties and International Agreements – states that this Agreement prejudices not the rights and obligations resulting from any other international agreement to which one or both Parties are party.
Article 25 Settlement of Disputes – provides that any disputes arising in the implementation or interpretation of the Agreement, shall be settled by means of consultations via diplomatic channels.
Article 26 Application in Time – provides that this Agreement shall apply to any extradition request submitted after its entry into force.
Article 27 Amendments – states that amendments may occur by mutual consent of both Parties.
Article 28 Entry into force and Termination – sets out the provisions for the entry into force of the agreement, including mutual notification of Parties once internal legal procedures are completed and when it will take effect and the ground for the termination.

2 MAIN DISCUSSION POINTS

2.1 The Importance and Scope of the Agreement

The meeting began with a summary of the Articles of the Agreement by Mrs. Thompson where the most pertinent points and scope of the agreement were explained.

The principle of extradition governing this document and its context and scope being that all persons found in the territories of either parties being tried for criminal offence is covered by the document. Another pertinent point that arose is that not all offences under the Agreement are extraditable. Offences with a two-year imprisonment or less are not eligible for extradition. This was made so, as it would not be in Seychelles' interests.

Ms. Michel further provided the importance of extradition agreements for Seychelles which is always welcomed by the FAD in addition to agreements on Mutual Assistance in criminal matters and transfer of prisoners as they are all related with deterring and counteracting crime. She noted that extradition agreements differ from transfer of prisoners as the latter occurs after prosecution and sentencing while extradition happens prior to prosecution.

Extradition enables the creation of a bridge to exchange persons especially considering the sovereignty of different states that have different regulations and proceedings on the prosecution of persons. This makes extradition agreements quite complex to negotiate as the parties must find a middle ground amidst their differences. The signed agreements will also enhance and confirm Seychelles' diplomatic relations with France. She informed that the FAD plans to sign the Agreement in July 2024.

2.2 Reasoning for Extradition Agreement with France

The Committee sought to know why the Seychelles chose and prioritised to have the Agreement with France and not any other country or multilateral block such as the European Union (EU), especially since most of Seychelles' tourism revenue hails from there. There is also the matter of Seychellois serving sentences in other countries such as Egypt. Ms. Michel began by providing a clear explanation in the case of Egypt, where she informed the committee that discussions on the transfer of the prisoners has been previously raised with the Egyptian Ambassador which would necessitate the signing of a transfer agreement with Seychelles. She expressed that the FAD tried its best and even sent a draft of the text to Egypt which was amended but fundamentally no agreement was made as Egypt already felt that its goodwill towards the Seychellois prisoners and Seychelles on the matter, was spent.

Further reasons provided mainly for the agreement with France was because of the occurrence of a recent murder case involving French nationals where the Government of Seychelles agreed to France taking the person. Ms. Michel believes that through the Agreement, France is attempting

to ensure that there is a recourse and proper procedures in place to deal with any such eventualities in the future.

On the matter of having an Extradition Agreement with the EU, Mrs. Thompson explained that even though Seychelles would be willing to proceed with an agreement with the EU, it is not politically plausible for Seychelles as each country might have their own target interests on extradition. Additionally, it would not be possible for Seychelles cater for the different legislative frameworks and regimes of the various EU states as the negotiations with France alone proved challenging. Lastly, the scope of the Seychelles Extradition Act is limited and reduced such that the Act applies to Commonwealth countries while for other states, an extradition agreement is required, making extradition more complex. The Act therefore needs to be reviewed and modernised as it is not efficient.

2.3 Clarification on the Discretionary Grounds for refusal provision

The committee sought clarification on Article 4 (e) which addresses the humanitarian grounds for refusal, specifically to a scenario where the person sought is young and in good health when the offence is committed but when sought for surrender, this is not the case meaning the person's age or state of health has basically deteriorated. Mrs. Thompson explained that Seychelles made this discretionary as it will depend on the different circumstances such as an instance where a person suffers from a medical condition and can still be extradited. The basis to determine this takes into the country's interest into account so it is left to the Republic to decide.

2.4 Implications for Dual Citizenship holder

Questions were raised by the Committee on the status and human rights implications of a person being sought for extradition, who holds dual citizenships of French and Seychellois. Mrs. Thompson noted there are no provisions expressly addressing dual citizenship holders and explained that this will be covered under Article 13 on Postponed or Temporary Surrender. Here, the interest of both parties will be examined through correspondents via diplomatic channels. In the case where Seychelles requires the person to remain in the country, postponement of the extradition can take place or Seychelles may temporarily transfer the person who can then be sent back to Seychelles later, or vice versa. The determining factors for these cases would be the consent of both parties.

Further concerns arose from the committee however, on the lack of coverage and protection for dual nationality citizens under the agreement and enquired on any recourse available to them. Ms. Michel reassured the committee that no rights are being violated by first explaining that the Constitution provides for extradition of nationals whereas this agreement states that extradition of nationals will not be allowed. This means that the Constitution provides a leeway for extradition

of a national to be considered. Secondly, Ms. Michel informed that the Extradition Act, in fact, provides an extradited person with the right to contest their extradition through a set of procedures.

Furthermore, Mrs. Thompson noted that discussions on the matter during the negotiations were resolved by the existence of the grounds for refusal and the due process mentioned above, reinforced by communication via diplomatic channel. She also explained that the agreement was negotiated with the intent of protecting the interest of both parties but at the same time, ensure that it is not against the ground of refusal where your rights to this is protected by the Constitution of Seychelles.

3 RECOMMENDATIONS

The IAC recognises the importance of the ratification of this Extradition Agreement as a deterrent for crime. The Committee hopes for continuous good, diplomatic relations between France and Seychelles and thanks the delegation from FAD and the Attorney General's Office for their work on the Extradition Agreement.

The Committee makes the following recommendations to the Executive:

Recommendation One: Respect for Human Rights

Considering the complex and sensitive nature of Extraditions and the questions raised on the matter of dual citizenship, the Committee recommends that Human Rights in the implementation of this Agreement, be upheld and respected throughout extradition proceedings.