

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable
CP 09/2022

In the matter between:

MUKESH VALABHJI
(*rep. by France Bonte*)

Petitioner

and

THE REPUBLIC
MR. WAVEL RAMKALAWAN
MR. AHMED AFIF
MR. ROGER MANCIENNE
THE ATTORNEY GENERAL
THE ATTORNEY GENERAL
(*rep. by Ria Alcindor*)

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent

THE ANTI-CORRUPTION COMMISSION
(*rep. by Michael Skelley*)

7th Respondent

THE DEFENCE FORCES OF SEYCHELLES
(*rep. by Ria Alcindor*)

8th Respondent

Neutral Citation: *Valabhji v Republic & Ors* (CP 09/2022) (14 May 2026)

Before: M Burhan J (Presiding), B Adeline J, D Esparon J

Summary: Whether the Petition was time-barred; whether the ACCS had lawful prosecutorial jurisdiction; whether Act 9 of 2022 operated retrospectively in breach of Article 19(4); whether the ex parte Order, arrest, and remand contravened the Constitution; whether the Anti-Money Laundering provisions and legislative amendments were constitutional; whether removal of Attorney-General consent complied with Article 76; whether asset restriction orders can be removed; and whether alleged prejudicial conduct violated Articles 19 or 27.

Heard: 04 November 2025; 25 November 2025; 01 December 2025

Delivered: 14 May 2026

JUDGMENT

BURHAN J with B Adeline and D Esparon JJ concurring

[1] The aforementioned Petitioner filed a petition on 18 November 2022 seeking the following reliefs from this Court:

A. *“Interpret The Charter:*

- i) *in such a way as not to be inconsistent with any international obligations relating to Human Right and freedoms, particularly the Covenant on Civil and Political Rights which Seychelles acceded to in 1992, the European Convention on Human Rights and the American convention on Human Rights and the American Convention on human Rights*
- ii) *in line with Article 48 (a to d) of the Constitution.*

B. *To grant the following orders:*

- i) *A Declaration that Act 9 of 2022 is inconsistent with and contravenes Article 19 of the Charter, in the alternative the relevant provisions of Act 9 of 2022 that contravenes Article 19.*
- ii) *A Declaration that section 3(8) of the Anti-money Laundering Act, 2006 is inconsistent with the Constitution and therefore void.*
- iii) *A Declaration that the consequential amendment to section 3(8) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 is inconsistent with the Constitution and therefore void.*
- iv) *A Declaration that the process of enacting Act 9 of 2022 contravenes Article 85, 86 and 87 of the Constitution.*
- v) *A Declaration that the acts and omissions of the 1st, 2nd, 3rd, 4th, 5th and 7th Respondents as particularized contravene the Constitution and provisions of Article 19 and 27 of the Charter*
- vi) *Order the repeal Act 9 of 2022.*
- vii) *A Declaration that the charges against the Petitioner namely Counts 7,8,13 are inconsistent with Articles 19 and 27 of the Charter and therefore void.*
- viii) *A Declaration that all the charges against me be withdrawn as the actions and omissions of the 1st, 2nd, 3rd, 4th, 5th and 7th Respondents as particularized contravene the Constitution and provisions of Article 19 and 27 of the Charter.*
- ix) *A Declaration that the Petitioner is being denied a fair hearing.*
- x) *Declare that the restrictions entered against all assets of the Petitioner and of all entities which he has an interest therein to be contrary to Article 19 and 27.*
- xi) *Order the removal of all restrictions entered against all assets of the Petitioner and of the entities that he has an interest therein.*
- xii) *Make such declaration, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the application.*

- xiii) *Make such additional order under this Constitution or as may be prescribed by law.*
- xiv) *Award a token compensation of Seychelles Rupee One only, to the Petitioner for miscarriage of justice as given the state of the current economic situation of the country, the Petitioner does not wish to claim any compensation from tax payers.*
- xv) *Grant any remedy available to the Supreme Court against any person, or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the Court considers appropriate.*
- xvi) *Award cost of this Application to be payable by the 2nd, 3rd, 4th Respondents and the Commissioner of the 7th Respondent."*

[2] The 1st, 2nd, 3rd, 4th, 5th, 7th and 8th Respondents raised preliminary objections to the petition and filed submissions in support of same. Subsequently, on an application made by the Petitioner (MA 205 of 2023), proceedings in this petition were stayed by this Court by order dated 21 November 2023, pending determination of an application to amend the charge sheet in the connected criminal case CR 114 of 2021. The charge sheet was subsequently amended by rulings of the Trial Judge dated 22 April 2024 and 19 July 2024 in the said criminal case. Certain charges in CR 114 of 2021 were ordered to remain on the Trial Court's record pending determination of this petition.

[3] An application (MA 134 of 2024) for a further stay of the proceedings in this petition was dismissed by this Court on 27 November 2024. Considering the fact that the charge sheet prevailing in the connected criminal case CR 114 of 2021 at the time this petition was filed was subsequently amended, the Petitioner was given an opportunity to amend the petition but chose not to do so.

[4] By ruling dated 25 March 2025, this Court dismissed the Respondents' application to dismiss the petition and determined that, notwithstanding amendments to the charge sheet, the following alleged contraventions relevant to this petition remained live for determination i.e. :

- a) *The arrest of the Petitioner was unlawful and contravenes Article 18 of the Charter;*
- b) *The 7th Respondent has no jurisdiction to prosecute the Petitioner and the powers to prosecute contravene Article 19 of the Charter and Article 76 of the Constitution;*

c) *The powers of the 7th Respondent to investigate and prosecute is inconsistent and contrary to Article 76 of the Constitution;*

d) *The Order dated 19 November 2021 in XP21/2021 SCSC 776 contravenes Article 19 of the Charter;*

e) *The 7th Respondent had no jurisdiction to charge the Petitioner on the 17 December 2021 acted ultra vires and contravened Article 19 of the Charter;*

f) *The continuous remand and non-withdrawal of charges against the Petitioner pending the presentation of the amendment to the Anti-Corruption Commission Act 2016, namely Bill 3 of 2021 to the National Assembly New Act 58 of 2021 and Bill 8 of 2022 and now Act 9 of 2022, contravened Article 19 and 27 of the Constitution;*

g) *The prejudicial statements made by the 2nd, 3rd and 7th Respondents and the representative of the 1st Respondent contravenes Article 19 and 27 of the Charter;*

h) *The actions of the members of the 8th Respondent to force a confession from the Petitioner contravenes Article 19 and 27 of the Charter; and*

i) *The Petitioner will not have a fair hearing in Case CR114 of 2021, as the Court proceedings, amendments to the Anti-Corruption Act, 2016 and procedural contraventions, the prejudicial statements and intimidation by members of the 8th Respondent, contravenes Article 19 and 27 of the Charter."*

[5] In its ruling on preliminary objections delivered on 27 June 2025, this Court dismissed prayer B (vii) refer [1], which had become untenable following the amendments of the charge sheet. Other prayers, including those concerning withdrawal of charges, alleged denial of a fair hearing, and asset restrictions, were reserved for determination on the merits, as they were interrelated with the constitutional validity of the impugned legislative provisions. This Court was satisfied at that stage that the Petitioner had established a prima facie case, sufficient for court to proceed to substantive determination.

[6] This judgment concerns the merits of the petition and the remaining prayers contained in [1] herein.

Background Facts

[7] The Petitioner avers that the 2nd and 3rd Respondents, prior to assuming office in October 2020, made allegations concerning alleged "disappearance" of USD 50 million received by Seychelles from Abu Dhabi which was a central theme of their political campaign. It is further averred that, following his election, the 2nd Respondent publicly reiterated this position during his first State of the Nation Address, expressly demanding results from the 7th Respondent and warning that failure to produce such results by the

end of 2021 would lead to the Commission's closure. The Petitioner admits that at all material times, he was serving as a Government official when the negotiations for the said USD 50 million were conducted and when the funds were received into the Central Bank of Seychelles.

- [8] The Petitioner avers that he was arrested on 18 November 2021 by officers of the Anti-Corruption Commission, assisted by officers of the 7th Respondent and two armed foreign nationals, upon his arrival at the 'Zil Air helipad' Mahe. He was detained overnight at the Prohibited Immigration Centre under police guard, allegedly acting under the command of armed foreigners who in turn were under the direct command of a State Security Officer of the Presidential Guard, a member of the 8th Respondent which is under the direct command and control of 2nd Respondent.
- [9] On 19 November 2021, the Petitioner states he was brought to the Supreme Court compound and served with an application for further holding under section 101 of the Criminal Procedure Code. Earlier that morning, the 7th Respondent had made an ex parte application in XP21/2021 SCSC 776, seeking leave to prosecute the Petitioner and to file charges, summons, and the section 101 application. By order of the same date, the Chief Justice granted leave for prosecution under section 66(1) of the Criminal Procedure Code, noting that the Attorney General had declined to prosecute.
- [10] The Petitioner avers that he was unaware of the ex parte proceedings at the material time. The section 101 application was heard and, on the same day, the Petitioner was remanded to custody in the Central Police Station. The alleged offences concerned official corruption under the Penal Code and offences under section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act, 2020 (AMLCFT Act).
- [11] The Petitioner avers that on 20 November 2021, he was transported by police officers, including the Deputy Commissioner of Police, to Félicité Island on a Coast Guard speedboat operated by military personnel of the 8th Respondent, alleged to be under the authority of the 2nd Respondent. He states that searches were conducted on the island by a group of armed men, including Seychellois officers and foreign nationals speaking with a British accent, whom the Petitioner believes were members of the 8th

Respondent, which is under the direct command and control of the 2nd Respondent, who assisted in the conducting of searches.

[12] The Petitioner further avers that on 23 or 24 November 2021, armed members of the 8th Respondent entered the Central Police Station during the night while he was in detention, allegedly intimidating him and attempting to coerce a confession.

[13] At paragraph 74 of the petition, the Petitioner further states he bases his petition on the following contraventions in law made by the Respondents:

“74.1 The arrest of the Petitioner was unlawful and contravened Article 18 of the Charter;

74.2 The 7th Respondent had no jurisdiction to prosecute and contravened Article 19 of the Charter and Article 76 of the Constitution by doing so;

74.3 The powers of the 7th Respondent to investigate and prosecute is inconsistent and contrary to Article 76 of the Constitution;

74.4 The order dated 19 November 2021 in XP21/2021 SCSC776 contravenes Article 19 of the Charter;

74.5 The 7th Respondent had no jurisdiction to charge the Petitioner on the 17 December 2021, acted ultra vires and contravened Article 19 of the Charter;

74.6 The continuous remand of the Petitioner from the 19th November 2021 to 6th May 2022 and non-withdrawal of charges against the Petitioner pending the amendment to the Anti-Corruption Commission Act, 2016, namely Bill 8 of 2022 now Act 9 of 2022, contravened Article 19 and 27 of the Charter;

74.7 The amendments to the Anti-Corruption Act, 2016, namely Act 8 of 2019, Act 39 of 2021 and Act 58 of 2021 and Act 9 of 2022 contravenes Article 19 and 27 of the Charter;

74.8 The amendments to the Anti-Corruption Act, 2016, namely Act 9 of 2022 are inconsistent with and contravenes Article 19 and 27 of the Charter and other international human rights conventions and obligations of the Republic;

74.9 The amendments to the Anti-Corruption Act, 2016, namely Act 9 of 2022 creates a "back-door" empowering the 7th Respondent to apply the Anti-Corruption Act, 2016 retrospectively, and a "back-door" for retrospective application of the Anti-Corruption Act, 2016 contrary to Article 19 of the Charter, consequently some of the charges against the Petitioner are contrary to Article 19 of the Charter;

74.10 The amendment to the Anti-Corruption Commission, namely Act 9 of 2022 introduced in a new offence of conspiracy under which the Petitioner was charged with, which is inconsistent with and contravenes Article 19 of the Charter;

74.11 The amendments to the Anti-Corruption Commission, namely Act 8 of 2019, Act 39 of 2021 and Act 58 of 2021 and Act 9 of 2022 are inconsistent with and contravenes Article 76 of the Constitution;

74.12 The actions and omissions of the 2nd, 4th and 5th Respondents in enacting Act 9 of 2022 are ultra vires and contravenes Articles 85, 86 (1) and 87 of the Constitution;

74.13 The prejudicial statements made by the 2nd, 3rd and 7th Respondents as public officials and representative of the 1st Respondent contravenes Article 19 and 27 of the Charter;

74.14 The actions of the members of the 8th Respondent to force a confession from the Petitioner contravenes Article 19 and 27 of the Charter;

74.15 That the Petitioner will not have a fair hearing in Case CR. No 114 of 2021, as the proceedings, procedural contraventions, prejudicial statements by public officials contravene Article 19 and 27 of the Charter.”

- [14] The Petitioner contends that the actions of the Respondents set out above and in the entire petition contravene several provisions of the Constitution of Seychelles, including Articles 19(1), 19(2), 19(4), 27, and 48. In particular, Article 48 obliges Seychelles to take judicial notice of international human rights instruments to which it is a party and to which it subscribes.
- [15] This Court will consider the lengthy submissions made by all parties in its analysis and findings.

ISSUES FOR DETERMINATION

- [16] Having duly considered the averments in the pleadings and the submissions, this Court is of the view that the following issues arise which require determination by this Court.
- (1) Whether the Petition, or any part thereof, is time-barred under the Constitutional Court Rules, and in particular whether the alleged contraventions are properly characterised as completed or continuing violations;
 - (2) Whether, at the time of the Petitioner’s arrest and charge, the Anti-Corruption Commission Seychelles (“ACCS”; also referred to as “Commission”) possessed lawful jurisdiction to prosecute the offences laid against the Petitioner, and if not, whether the institution and maintenance of such charges violated Article 19(1) of the Constitution;
 - (3) Whether the subsequent amendments to the Anti-Corruption Act, in particular Act 9 of 2022, operated retrospectively so as to cure any jurisdictional defect, and if so, whether such retrospective application contravenes Article 19(4) of the Constitution;
 - (4) Whether the ex parte Order dated 19 November 2021 (XP21/2021 SCSC 776) contravened Article 19 of the Constitution or otherwise unlawfully conferred prosecutorial authority upon the ACCS;

- (5) Whether the Petitioner's arrest on 18 November 2021 was unlawful and in contravention of Article 18 of the Constitution.
- (6) Whether the Petitioner's remand, in so far as it was founded upon charges instituted without lawful prosecutorial competence, constituted a violation of Article 19.
- (7) Whether section 3(8) of the Anti-Money Laundering Act 2006 and the amendment to section 3(8) of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2020 are inconsistent with Article 19(4) of the Constitution.
- (8) Whether the impugned legislative amendments and their enactment contravened Articles 85, 86 or 87 of the Constitution, or otherwise violated Articles 19 or 27 on grounds of abuse of legislative process or unequal protection of the law.
- (9) Whether the removal of the requirement for Attorney-General consent to prosecution under the Anti-Corruption Act contravenes Article 76 of the Constitution.
- (10) Whether the alleged prejudicial public statements, attempted intimidation, or involvement of armed personnel gave rise to violations of Articles 19 or 27 of the Constitution.
- (11) Whether the Petitioner is entitled to an order for removal of the restrictions imposed on the assets of the Petitioner and entities in which he holds an interest.

Issue 1

Whether the Petition, or any part thereof, is time-barred under the Constitutional Court Rules, and in particular whether the alleged contraventions are properly characterised as completed or continuing violations;

- [17] The Respondents raised, at the stage of preliminary objections, the contention that the petition is time-barred pursuant to the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules, specifically Rule 4, in that it was filed outside the prescribed three-month period from the date of the alleged contraventions.

- [18] By ruling delivered at the preliminary stage, this Court deferred determination of this issue, observing that the question whether the alleged contraventions were of a continuing nature, could only be properly resolved at the time of dealing with the merits of the case.
- [19] The material events complained of by the Petitioner in his petition filed on the 18 November 2022 span several dates, including the Petitioner's arrest on 18 November 2021, the institution of charges in December 2021, remand proceedings, and the charge filed in May 2022 and legislative amendments in the ACA enacted in May 2022. The limitation question therefore turns on whether the alleged constitutional violations were completed acts, or whether they constitute continuing contraventions persisting from the time of filing the criminal case CR 114/2021 against the Petitioner.
- [20] The Petitioner has remained under prosecution and on remand in custody from the time of arrest and at the time of filing of the petition. One of the main constitutional challenges, namely that the charges were instituted and maintained without lawful prosecutorial jurisdiction, concerns not merely the act of charging, but the continued subjection of the Petitioner to custody and criminal proceedings said to be unlawfully constituted. To the extent that the petition challenges the legality of the prosecution and the validity of ongoing charges, those allegations amount to a continuing contravention which persist since the time of filing of case CR 114/2021. The same reasoning applies to complaints relating to remand in custody founded upon allegedly unlawful charges.
- [21] It is the considered view of this Court that where a person remains subject to ongoing criminal proceedings or deprivation of liberty said to be founded upon an alleged unconstitutional action, the alleged contravention may properly be characterized as continuing for as long as that state of affairs exists.
- [22] A different position arises, however, in respect of challenges directed specifically at section 3(8) of the AMLCFT Act 2020, where the Petitioner at present is no longer charged under AMLCFT Act 2020 (refer charge sheet dated May 2022 (**Exhibit MV2, Annex A Charges**) at the material time of filing this petition 18 November 2022. Such a complaint does not constitute a continuing violation. Accordingly, to the extent that the petition seeks to impugn section 3(8) of the AMLCFT Act 2020 in circumstances where the Petitioner was not, at the time of filing, charged under that Act, that aspect

of the petition falls outside the prescribed limitation period and is time-barred. The limitation objection therefore succeeds only in part. The Court proceeds to determine the substantive issue accordingly.

Issues 2 and 3

Whether, at the time of the Petitioner's arrest and charge, the Anti-Corruption Commission Seychelles ("ACCS") possessed lawful jurisdiction to prosecute the offences laid against the Petitioner, and if not, whether the institution and maintenance of such charges violated Article 19(1) of the Constitution.

Whether the subsequent amendments to the Anti-Corruption Act, in particular Act 9 of 2022, operated retrospectively so as to cure any jurisdictional defect, and if so, whether such retrospective application contravenes Article 19(4) of the Constitution;

The Submissions on Issues 2 and 3

- [23] The Petitioner submits that he was charged under laws which were amended after his arrest, specifically Act 58 of 2021 and Act 9 of 2022, which expanded the prosecutorial powers of the Anti-Corruption Commission. It is his contention that the retrospective application of these laws violates the principle of legality and legal certainty, as enshrined in Article 19(4) of the Constitution of Seychelles, Article 15 of the ICCPR, and Article 7 of the ECHR.
- [24] The Petitioner further submits that he could not have foreseen that his conduct would be criminalized under legislation enacted post facto. Further, it is submitted that Act 9 of 2022 was amended in a manner that targeted him specifically, as admitted by counsel for the ACCS when seeking an adjournment to allow the National Assembly to pass the retrospective law. The Vice-President, in explaining the purpose of the amendment, stated that it was intended to "close loopholes" in the law with respect to ongoing cases. Notwithstanding concerns raised by members of the National Assembly regarding the constitutionality of the amendment, it was passed under the influence of the executive, with the 2nd Respondent assenting to it the following day.

- [25] The Petitioner in his submissions further states that Act 9 of 2022 was enacted with undue haste and under significant executive influence, specifically to retroactively validate charges against him. The Petitioner invokes Article 27 of the Constitution of Seychelles and Article 6 of the ECHR, submitting that the legislative process was manipulated in a manner that violates the separation of powers and the rule of law. It is further submitted that the Vice-President at that time, who is a key prosecution witness in the Petitioner's case, personally defended the Bill in the National Assembly and involvement of a prosecution witness in the legislative process further compromises the integrity of the proceedings.
- [26] For further detailed background of the allegations see paragraphs 15-74; 76-77, 79, 80-81, 83-84, 87.
- [27] The ACCS submits that the Petitioner was charged on 17 December 2021 under the Commission's authority to initiate the prosecution of offences under Part III of the ACA without consent of the Attorney General granted by Act 8 of 2019. These included offences of corruption under the Penal Code, reading s51A (placed in Part III) and s64 of Act 8 of 2019 together, as well as money laundering offences under the AMLCFT Act 2020 granted by Act 58 of 2021 enacted on 16 December 2021.
- [28] The ACCS submits that several of the legislative amendments relied upon by the Petitioner were not relevant to his investigation or prosecution. In respect of those that were relevant namely, the offences of conspiracy to act corruptly and laundering of criminal proceeds under the 1996 and 2006 Anti-Money Laundering Acts, it contends it cannot be said to have created any injustice to the Petitioner. The ACCS argues that the investigation, based on material seized from the Petitioner, disclosed evidence of a conspiracy connected to the USD 50 million UAE loan and a temporal link between laundered funds and the predicate acts of corruption.
- [29] The ACCS further submits that the chronology of amendments that widened the ACCS' powers does not find evidence they were the result of collusion to 'target' the Petitioner. The ACCS was entitled to make recommendations under its statutory function to review and recognize provisions of laws for the prevention of corruption. The amendments to the legislation were aimed at improving its ability to detect and prevent corruption, which must include prosecution.

- [30] The ACCS further submits that the timing of the legislative amendments does not support an inference of legislative targeting. It maintains that it acted within its statutory mandate in recommending reforms to strengthen the legal framework for combating corruption. The amendments are said to be of general application, intended to enhance the Commission's functions, and, in particular, amendments introduced by Acts 8 of 2019 and 4 of 2020 pre-dated the Petitioner's arrest by up to two years.
- [31] It is further submitted by the ACCS that it is the retroactive application of legislation that Article 19(4) of the Constitution prohibits. None of the amendments to the ACA by the impugned Acts, nor section 3(8) of the AMLA 2006 (as amended by the 2008 Act), make criminal that which was not deemed to be so at the time the conduct occurred. The Petitioner faces charges for alleged historic offending committed at a time when section 91 Penal Code offences and offences contrary AMLAs of 1996 and 2006 were in force. Against that, the submission that he "*could not have foreseen that his conduct would be criminalized under laws enacted post facto*" is without foundation.
- [32] The ACCS submits that the nature and timing of the amendments to the ACA reflect the reality that legislation is often developed incrementally in response to identified needs. This is expressly contemplated by the ACCS' statutory function under section 5(1)(e) of the Act, which mandates it to review existing laws for the prevention of corruption and to submit recommendations for their effective implementation. It is further submitted that the ACCS' tasking in May 2017 to investigate allegations relating to the USD 50 million UAE loan exposed limitations in the original legislative framework, necessitating reform. The fact that the Petitioner fell within a class of persons affected by the amendments does not detract from their general application. The ACCS' engagement with the President, in his capacity as Minister of Legal Services, and with the Attorney General in the discharge of its statutory mandate is said not to constitute evidence of collusion.
- [33] The ACCS referred to the Privy Council decision in *Don John Francis Liyanage & Ors v The Queen* (1965 UKPC 39) submitting that it considered the issue of generality of legislation in relation to Acts of 1962 enacted by the Government of Ceylon to prosecute and sentence men suspected of involvement in a coup.

- [34] The ACCS further submits that the fact that amendments were made to the ACA after the Petitioner's arrest and detention, cannot by themselves render what was a lawful investigation, unlawful. Neither can it make a lawful arrest and/or detention, an unchallenged decision of the Court, jurisdictionally unlawful and/or arbitrary.
- [35] It is further submitted that the enactment of legislation with retrospective effect, in its strict sense, is not unconstitutional. Article 19(4) of the Constitution, together with applicable international human rights instruments, prohibits retroactive criminal legislation, namely legislation which renders criminal conduct that was lawful at the time it was committed. The ACCS submits that a distinction must be drawn between retrospective and retroactive legislation, notwithstanding that the terms are often used interchangeably. While retrospective legislation is not the norm, it is not constitutionally prohibited, as recognized by Lord Scarman in Carson v Carson [1964] 1 WLR 512 at 517.
- [36] The ACCS submits that, as at April 2016, its statutory remit was to investigate and conduct cases, with the consent of the Attorney General, in respect of the corruption offences set out in Part III of the ACA, including inchoate offences such as conspiracy and attempt (as set out in Part III of the primary ACA). Several of these offences closely mirrored offences under the Penal Code relating to corruption in public office.
- [37] It is further submitted that the subsequent expansion of the ACCS' investigative and prosecutorial powers reflected the intended maturation of the institution and enabled it to address corruption and the laundering of its proceeds more comprehensively, including offences uncovered during the investigation into the USD 50 million UAE loan. The amendments are said to concern primarily the identity of the prosecuting authority and were achieved through the proper exercise of the ACCS' statutory functions. The fact that the Petitioner was affected is said to arise solely from the outcome of the ACCS' investigation, and the Attorney General at all times retained the power to take over the prosecution.

Analysis - Issue 2

Whether, at the time of the Petitioner's arrest and charge, the Anti-Corruption Commission Seychelles ("ACCS") possessed lawful jurisdiction to prosecute the

offences laid against the Petitioner, and if not, whether the institution and maintenance of such charges violated Article 19(1) of the Constitution.

[38] Giving due consideration to the aforementioned submissions, it is apparent the Petitioner was arrested on 18 November 2021 and charged by the ACCS on 17 December 2021. The Anti-Corruption Act in force at that time was Anti-Corruption Act, 2016 (“ACA 2016”). The amendments relevant to arrest, prosecution and investigation powers of the ACCS, which occurred prior to the charging of the Petitioner were as follows: Anti-Corruption (AC) (Amendment) Act, 2019 (Act 8 of 2019 on 5 August, 2019); Anti-Corruption (Amendment) Act, 2020 (Act 4 of 2020 on 6 April, 2020); Anti-Corruption (Amendment) (No.2) Act, 2021 (Act 39 of 2021 on 30 September, 2021); Anti-Corruption (Amendment) (No.3) Act, 2021 (Act 58 of 2021 on 15 December, 2021)

[39] The ACCS the 7th Respondent admits that it obtained leave to prosecute and to file charges under section 66(1) of the Criminal Procedure Code by filing Ex parte application in XP21/2021 SCSC 776; the (“XP Order”).

[40] Section 66(1) reads as follows:

66. Permission to conduct prosecution

(1) The Judge or any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the President in this behalf shall be entitled to do so without permission. With the like permission, any manager or employee may prosecute for an offence committed to the prejudice of his principal or employer.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by section 65, and the provisions of that section shall apply to any withdrawal by such person or officer.

(3) Any person conducting the prosecution may do so personally or by advocate.

[41] The facts before Court indicate that leave was obtained on 19 November 2021 and the Petitioner was charged on 17 December 2021.

[42] It should be borne in mind that the AC (Amendment) Act 4 of 2020 repealed section 5(1)(a) of the ACA 2016 which provided for function of the Commission to “to enquire into and conduct investigation of offences” and substituted it with function to “to enquire into and conduct investigation of offences relating to corruption as well as

money laundering offences committed under furtherance of corrupt practices.” The ACCS’ investigation jurisdiction at the time of the XP order therefore included both corruption and money laundering under furtherance of corrupt practices and it was within their powers to seek leave to prosecute such offences they investigated. Further, the requirement of consent of the Attorney-General was already repealed under AC (Amendment) Act 8 of 2019.

[43] The Trial Court in its Ex-parte order relevant to CR 114 of 2021 determined that the ACCS did not require permission of the Court to prosecute as under section 64 of the ACA 2016 read with Article 76 (4) (b) and (c) of the Constitution the ACCS *“has power to prosecute its own cases and under its own name.”* The Court therefore only limited itself to granting a prayer asking for appointment of an advocate other than a subordinate officer of the Attorney General to prosecute the case.

[44] It is to be observed that in the XP Ruling, the Trial Court specifically limited authority to prosecution within the limit of section 64 of the ACA 2016 and subject to the Constitution:

“[16] Having made the above determinations I am of the view that the Applicant has satisfied this court that it has power to prosecute on its own right without the need to seek permission under Section 66 (1) of the Code, and so I order. This prosecution, however, has to be done strictly within the limit of Section 64 of the Act and subject to the Constitution. Prosecution entails any matters arising out of or necessarily preceding a prosecution and connected applications. . .”

[45] It is the contention of the Petitioner that the prosecution powers of the ACCS were limited at the time to section 64 of the ACA as amended.

[46] When one considers the amendments to the ACA, it is apparent the powers to investigate offences by the ACCS were broadened by section 2 (d) of Anti-Corruption (Amendment) Act 8 of 2019 of the ACA which inserts after section 51 the following:

“51A. The Commission may investigate or take over and continue the investigation of offences provided under Chapter X and Chapter XXXVIII of the Penal Code (Cap 158)”;

[47] Section 64 was subsequently amended by Section 2 (h) of the AC (Amendment) Act 8 of 2019, which introduced the following provisions relevant to granting powers to the ACCS to prosecute:

(h) In PART IV; repealing the heading and substituting therefor "PROSECUTION POWERS OF THE COMMISSION"

(i) in section 64 by repealing the section and substituting therefor "Prosecution for an offence under PART III may be instituted by the Commission."

[48] The aforementioned amendments indicate that the expansion of prosecution powers occurred in two principal ways. First, section 51A was introduced into Part III of the Act, identifying specified Penal Code offences as corrupt practices and falling within the investigative ambit of the ACCS. Secondly, those offences in Part III were incorporated into section 64 of the Act, which governs the ACCS' power to institute and conduct prosecutions.

[49] Section 2 of the AC (Amendment) (No.3) Act 58 of 2021 which came into force before the charges against the Petitioner were filed by the ACCS further extended powers for prosecution of offences under Part III to offences AMLCFT Act 2020 (5 of 2020) in furtherance of corrupt practices and reads as follows:

2. The Anti-Corruption Act, 2016 (hereinafter referred to as the principal Act) is amended as follows —

(c) in section 64 of the principal Act, the marginal note shall be repealed and replaced by "Prosecution by Commission", and after the words "PART III", the words "and money laundering offences committed under the Anti-Money Laundering the Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), in furtherance of the said corrupt practices" shall be added;

[50] In respect of the power to prosecute Penal Code offences, section 51A was also amended by AC (Amendment) (No3) Act 58 of 2021 to include more Penal Code offences and read as follows:

2. The Anti-Corruption Act, 2016 (hereinafter referred to as the principal Act) is amended as follows — (a) in section 51A of the principal Act, repeal the words "Chapter X", and therefor substitute the following words "Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV";

[51] Giving due regard to the ACA law as amended and set out above, this Court is satisfied therefore that at the time the Petitioner was charged, 17 December 2021, the ACCS had jurisdiction to prosecute offences under the ACA 2016 and its subsequent 2019 and 2021 amendments, relating to corrupt practices under Part III of the ACA which included offences under the following Chapters of the Penal Code: Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII,

Chapter XXXV); and “money laundering offences committed under the Anti-Money Laundering the Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), in furtherance of the said corrupt practices”.

[52] It would be pertinent at this stage to refer to section 31(1) of the Interpretation and General Provisions Act (IGPA) provides:

“The repeal of an Act does not –

(a) affect the previous operation of the Act or anything duly done or suffered under it;

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act;

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence against the Act; or

(d) affect any investigation, legal proceedings or remedy in respect of any right, privilege, obligation or liability referred to in paragraph (b), or any penalty, forfeiture or punishment referred to in paragraph (c), and the investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the Act had not been repealed.” (emphasis added)

[53] Upon perusal of section 31(1) of the Interpretation and General Provisions Act, it is evident that the repeal of an enactment, included under section 31(1) (d), does not affect any investigation or legal proceeding. The section expressly provides that any investigation or legal proceeding may be *instituted, continued or enforced* as if the repealing Act had not been enacted. Accordingly, investigations and legal proceedings may validly be commenced and pursued notwithstanding the repeal of the underlying statute.

[54] This principle is well established in common law jurisprudence. In *Director of Public Prosecutions v Lamb* [1941] 2 KB 89, the Court held that, in the absence of a contrary intention, the repeal of a statute does not affect liabilities incurred or proceedings already initiated under that statute.

[55] In light of the aforementioned, the ACCS had the required authority to conduct its investigation and institute legal proceedings, subject to the provisions of the Anti-Corruption Act, 2016. Pursuant to section 66(1) of the Criminal Procedure Code as read

with section 64 of the Anti-Corruption Commission Act, the Commission made an application before the Court seeking leave to proceed with the legal proceedings.

- [56] As mentioned earlier application was granted by the Trial Judge on the 19 November 2021, who expressly directed that the Commission may institute and continue legal proceedings, including enforcement proceedings, in accordance with the law and subject to section 64 of the Anti-Corruption Act 2016, as amended. Thereafter, the Commission proceeded with the matter and instituted charges against the accused. The charges included offences under both the 1996 Act and the 2006 Act.
- [57] It is argued, however, that the Anti-Corruption Act does not expressly confer upon the Commission jurisdiction or prosecutorial authority to institute proceedings under the repealed legislation or to pursue charges under the AMLCFT Act 2020, which repealed the 2006 and 2011 Acts.
- [58] In addressing this argument, it cannot be maintained that the institution of investigations and legal proceedings under a repealed enactment is unconstitutional solely by reason of such repeal. Section 31 of the Interpretation and General Provisions Act clearly preserves the validity of investigations and legal proceedings in respect of repealed legislation. The legal effect of that provision is that such proceedings are to be treated as though the repealing enactment had not been passed.
- [59] A reading of the aforementioned section 31 demonstrates that conduct was prosecutable under the repealed legislation. Prosecution under the AMLCFT Act, 2020 is granted to the ACCS by section 64 of AC (Amendment) (No.3) Act 58 of 2021 read together with Section 2 (h) of the AC (Amendment) Act 8 of 2019. However, as explained earlier, as section 31(1) (d) encompasses investigations and legal proceedings arising under the earlier enactments, which are preserved and continued as if those enactments had not been repealed. Therefore, such powers of prosecution of the ACCS would also encompass investigations under the earlier AML legislation though repealed.
- [60] This was further clarified by Amendment Act 9 of 2022. This amendment is consistent with Article 15 (2) of the International Covenant on Civil and Political Rights and Article 7(2) of the ECHR, both of which recognize that the prosecution of criminal conduct is not precluded where such conduct constituted an offence at the time it was committed under general principles of law recognized by the community of nations.

[61] In the circumstances, this Court finds nothing unconstitutional in the actions of the ACCS. While the statutory framework could have been articulated with greater precision, the Commission was vested with the necessary authority to institute and pursue the proceedings in question under Amendment 4 of 2020 of section 5(1) (a) of the ACA 2016 which empowered the Commission to *“to enquire into and conduct investigation of offences relating to corruption as well as money laundering offences committed under furtherance of corrupt practices”*.

[62] It therefore cannot be said that the ACCS has exceeded its jurisdiction. Further when one considers the amendment contained in section 64 (2) of the Amendment Act 9 of 2022 of the ACA 2016 which is now in force it reads as follows:

“Prosecution by the Commission

64(1) Prosecutions may be instituted by the Commission for the following offences

(2) The Commission may, with the leave of the Court, institute prosecutions for such other offences under the Penal Code or any other written law which are founded on the same facts or otherwise closely related to offences being prosecuted under subsection (1).” (emphasis added).

[63] It is the view of this Court that all the impugned amendments to the ACA 9 of 2022 were made to ensure that the powers and jurisdiction of the ACCS are clearer and in line within the ambit set out above. Further section 64 (2) of the Amended ACA Act 9 of 2022 now gives the Court jurisdiction to grant leave to the Commission to institute prosecutions of such other offences provided they fall within the ambit of section 5 (1) (a) of the ACA.

[64] For the aforementioned reasons the Petitioner’s contention that the conduct of the ACCS did not possess lawful jurisdiction to prosecute the offences against him under a repealed Act and the institution and maintenance of such charges violated Article 19(1) of the Constitution bears no merit.

Issue 3

Whether the subsequent amendments to the Anti-Corruption Act, in particular Act 9 of 2022, operated retrospectively so as to cure any jurisdictional defect, and if so, whether such retrospective application contravenes Article 19(4) of the Constitution;

[65] It would be appropriate to set out at the very outset of this analysis the impugned amendments in the Act:

“Repeal and replacement of section 40

2. The principal Act is amended by repealing section 40 and substituting therefor the following —

Conspiring or Attempting to commit an offence under the Act

“40.(1) A person who conspires with another to commit an offence under Part III of this Act is guilty of an offence and is liable, on conviction, to the same penalty as would apply on conviction for the Part III Offence.

(2) (a) A person who attempts to commit an offence under Part III of this Act is guilty of an offence and is liable, on conviction, to the same penalty as would apply on conviction for the Part III Offence.

(b) An attempt to commit an offence under the Act shall have the same meaning as under Chapter XXXIX of the Penal Code.”

Repeal and replacement of section 51A 3.

The principal Act is amended by repealing section 51A and substituting therefor the following —

Penal Code Offences

“51A. The Commission may investigate or take over and continue the investigation of offences provided under Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV, Chapter XXXVIII, Chapter XXXIX and Chapter XL of the Penal Code (Cap 158).

Repeal and replacement of section 64

4. The principal Act is amended by repealing section 64 and substituting therefor the following —

Prosecution by the Commission

“64.(1) Prosecutions may be instituted by the Commission for the following offences —
(a) Offences listed under Part III of this Act;

(b) Offences provided under Chapter V, Chapter X, Chapter XXVI, Chapter XXVII, Chapter XXVIII, Chapter XXX, Chapter XXXII, Chapter XXXV, Chapter XXXVIII, Chapter XXXIX and Chapter XL of the Penal Code (Cap 158)

(c) Money laundering offences under the Anti- Money Laundering and Countering the Financing of Terrorism Act, 2020 (Act 5 of 2020), the Anti-Money Laundering Act 2006 (Act 5 of 2006) and the Anti-Money Laundering Act, 1996 (Act 8 of 1996).

(2) The Commission may, with the leave of the Court, institute prosecutions for such other offences under the Penal Code or any other written law which are founded on

the same facts or otherwise closely related to offences being prosecuted under subsection (1).

(3) Where the Commission has instituted an investigation or prosecution for money laundering offences contrary to the Anti- Money Laundering Act 2006 (Act 5 of 2006), the Commission may exercise the powers of the Attorney General under Part IV and V of that Act and references to the Attorney General therein should be read as including the Commission.

(4) Where the Commission has instituted an investigation or prosecution for money laundering offences contrary to the Anti- Money Laundering Act, 1996 (Act 8 of 1996), the Commission may exercise the powers of the Attorney General under Section 11 of that Act and references to the Attorney General therein should be read as including the Commission.”

[66] This amendment, however, was enacted on 19 May 2022, which was after the arrest and initial charging of the Petitioner.

Analysis - Issue 3

[67] Upon consideration of the petition, the affidavits filed in support, and the Petitioner’s submissions and the submissions of the ACCS, this Court observes that certain aspects of the Petitioner’s argument lack precision. The amendments to the Anti-Corruption Act did not create any new criminal offences that Petitioner is charged with. Further, although the Anti-Corruption Act 2016 established a distinct set of corruption offences under that Act, the Petitioner is not charged with any offences created by the Anti-Corruption Act itself. Rather, he faces charges under the Penal Code and the offences contained under the Anti-Money Laundering legislation.

[68] The impugned Amendment Act 9 of 2022 of the ACA 2016 made powers and jurisdiction of the ACCS more clear and precise: The effect of the amendments to the ACA was not to criminalize new conduct, but to clarify the prosecutorial powers of the ACCS in respect of offences falling under the ACA, certain offences under the Penal Code, and offences under the Anti-money Laundering legislation.

[69] In effect, Amendment Act 9 of 2022 did not create any new offences. It extended the ACCS authority to prosecute a broader range of existing offences under the Penal Code and Anti-Money Laundering legislation by clarifying powers of prosecution to existing offences under the AML Act of 1996 (8 of 1996) and AML Act of 2006 (Act 5 of 2006). The next issue to decide is whether this makes the Amendment Act 9 of 2022 unconstitutional in the Seychelles context.

[70] It would be pertinent to at this stage to set out Article 19 (4) of the Constitution of the Republic of Seychelles it reads as follows:

Except for the offence of genocide or an offence against humanity, a person shall not be held to be guilty of an offence on account of any act or omission that did not, at the time it took place, constitute an offence, and a penalty shall not be imposed for any offence that is more severe in degree or description than the maximum penalty that might have been imposed for the offence at the time when it was committed.

[71] It would also be pertinent to set down Article 15 (1) and (2) of the International Covenant on Civil and Political Rights (ICCPR) which read as follows:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

[72] Article 7 of the European Convention on Human Rights (ECHR)

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

[73] Article 48 of the Constitution of Seychelles reads as follows:

This Chapter shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms and a court shall, when interpreting the provision of this Chapter, take judicial notice of—

a. the international instruments containing these obligations;

b. the reports and expression of views of bodies administering or enforcing these instruments;

c. the reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms;

d. the Constitutions of other democratic States or nations and decisions of the courts of the States or nations in respect of their Constitutions.

- [74] In order to determine whether the impugned Amended Act 9 of 2022 contravened Article 19(4) of the Constitution, one must ask the question whether at the time the offences set out in the charge sheet alleged to have been committed by the Petitioner occurred, did a law exist making such alleged offences criminal and punishable by law. It is clear when one peruses offences in the charge sheets (Exhibit MV2), Annex A, May 2022; Annex B, April 2023; Annex C May 2024) tendered to court by the ACCS which include charge sheets filed prior to the petition being filed and charge sheets filed after the petition was filed; such offence creating laws existed in the AML Act 1996 (8 of 1996), AML Act 2006 (Act 5 of 2006). What the impugned legislation has done is activated the powers of the ACCS (Commission) to prosecute, under the respective Acts which in no way contravenes Article 19 (4).
- [75] Consequently, the Act 9 of 2022 does not contravene Article 19(4) of the Constitution as it did not create any new offences that the Petitioner has been charged. The Petitioner is not charged and more so is not to be found guilty of an offence that did not, at the time it took place, constitute an offence; further Act 9 of 2022 does not impose any penalty that is more severe in degree or description than the maximum penalty that might have been imposed for the offence at the time when it was committed. It cannot be said that the extension of prosecutorial application of the 1996 and 2006 AML laws by Amendment 9 of 2022 is unconstitutional, as it imposes more severe penalties, as the statement of offences clearly indicate that the offences are punishable under the already prescribed penalties prescribed in the relevant 1996 and 2006 AML Acts.
- [76] Further when one considers Article 15 (2) of the ICCPR and Article 7 (2) ECHR both do not preclude the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal nor does it prevent any previous law from being reactivated to punish offences committed during the time the law was in force.
- [77] It is accepted by the ACCS that the express power to prosecute conspiracy to commit corruption under section 381 of the Penal Code was granted by Act 9 of 2022, enacted in May 2022. It is clear that on the 19 May 2022, Act 9 of 2022 arising from the Anti-Corruption Amendment Bill 2022 clarified the Commission's power to prosecute offences of attempt (Chapter XXXIX) and conspiracy (Chapter XL) to commit

corruption under the Penal Code, and money laundering offences under the 1996 and 2006 AMLA.

[78] This Court considers that offences of attempt and conspiracy are inchoate in nature and do not arise independently, but are intrinsically linked to a principal offence, in this case the principal offences being corruption and stealing. Given that the ACCS had general jurisdiction to investigate and prosecute the substantive offences of corruption and stealing as per [51] herein, it follows that such jurisdiction extends to ancillary inchoate offences which are connected to and arise from and are dependent upon the same underlying principal offence. Section 157 of the Criminal Procedure Code grants power to the Court to find an accused guilty of attempt to commit an offence even if he has only been charged with the offence, provided sufficient evidence exists. Section 3 (1) of the AML Act of 2006 and section 3 (3) of the AML Act 2008 also make attempt and conspiracy to money launder, offences. It also should be borne in mind that the ACCS had power under the ACA 2016 section 40, to prosecute conspiracy of offences under Part III of the ACA in which the Penal Code offences of corruption and stealing are included.

[79] Be that as it may, it is the view of this Court that any discrepancy or lack of competency alleged in the filing of the charges, is a matter for the Trial Judge to decide and appropriate ruling made. The ACCS is not prevented from withdrawing and amending its charges subject to the provisions of the Criminal Procedure Code and discretion of Court and has done so in this case too as per MV2 Annexure B & C. In addition this Court observes that in the charge sheet MV2 Annexure A, there are many other serious charges which warrant an application for remand. Therefore, it cannot be said that the Petitioner's remand was extended only on charges wanting jurisdiction to prosecute. Further section 64(2) of the Amending Act 9 of 2022, now grants the Trial Court power to grant leave to the ACCS to institute offences under the Penal Code or any other written law. In light of these facts, the conduct of the ACCS in filing the said impugned charges cannot be said to be unconstitutional on the basis they lacked competency or had done so deliberately to remand the Petitioner into custody.

[80] It would be pertinent to mention at this stage that since the filing of this petition further amendments to the charges have been made in CR 114 of 2021 which have been ruled on by the Trial Judge. The new amendments are not within the purview of this petition

as the Petitioner did not include them, though given a chance to amend this petition after such amendments were made.

- [81] For all the aforementioned reasons, this Court finds no merit in the Petitioners contention that the retrospective application of Amending Act 9 of 2022 is unconstitutional under Article 19(4) of the Constitution.

Issue 4

Whether the ex parte Order dated 19 November 2021 (XP21/2021 SCSC 776) contravened Article 19 of the Constitution or otherwise unlawfully conferred prosecutorial authority upon the ACCS;

- [82] The ACCS, the 7th Respondent, admits that it obtained leave to prosecute and to file charges under section 66(1) of the Criminal Procedure Code by filing Ex parte application in XP21/2021 SCSC 776 (“XP Order”).
- [83] The facts before Court indicate that leave was obtained on 19 November 2021 and the Petitioner was charged on 17 December 2019. The Petitioner avers that such leave should not have been granted as the ACCS lacked jurisdiction, there was no prima facie case, and the alleged offences were not properly established or time-barred (see paragraph 78 of the petition). The Petitioner challenges the constitutionality of the said XP Order.
- [84] It should be noted that the Constitutional Court is not appropriate forum to challenge the orders of the Trial Court; the appropriate route is to appeal the order. Nevertheless, since in determining the present petition, this Court needs to determine alleged issues with the ACCS’ jurisdiction, this Court makes the following observations with regards to ACCS’ jurisdiction at the time of the XP order and whether anything in the said order had granted the ACCS extension to their jurisdiction.
- [85] Section 5 (1) (a) of the ACA as amended empowered the ACCS “*to enquire into and conduct investigation of offences relating to corruption as well as money laundering offences committed under furtherance of corrupt practices*”. The ACCS’ investigation jurisdiction at the time of the XP order therefore included both corruption and money laundering under furtherance of corrupt practices and it was within their powers to seek

leave to prosecute such offences they investigated. Further, the requirement of consent of the Attorney-General was already repealed under the 2019 Amendment.

[86] However, having examined the XP Order, we observe that Notice of Motion inter -alia sought “*For leave to be given to prosecute the criminal matter under Section 64 of the Anti-Corruption Commission Act 2016*”. The Trial Court has determined that the ACCS did not require permission of the Court to prosecute as under section 64 of the ACA 2016 read with Article 76 (4) (b) and (c) of the Constitution the ACCS “*has power to prosecute its own cases and under its own name.*” It therefore only limited itself to granting a prayer asking for appointment of an advocate other than a subordinate officer of the Attorney General to prosecute the case.

[87] Thus, there is nothing in the XP Order which permits the ACCS to prosecute offences beyond the scope of section 64 of the ACA 2016, at the time of the charge and arrest of the Petitioner. The ACCS has not asked the Court in the XP Application to extend their powers, they merely asked permission to prosecute under section 64 of the ACA 2016, which the Court held the ACCS did not require permission; and that the ACCS had power to prosecute, however, such power has to be done within the limit of section 64 of the Act. We find no merit in the Petitioner’s allegations that as the ACCS lacked jurisdiction to investigate at that time.

[88] The mere fact that the application was heard ex parte does not in itself violate Article 19. No evidence has been adduced demonstrating that the Petitioner was deprived of any procedural safeguard protected under Article 19(2), nor that the Trial Court’s independence was compromised. Accordingly, the Court finds no violation of Article 19 arising from the XP Order itself.

Issue 5

Whether the Petitioner’s arrest on 18 November 2021 was unlawful and in contravention of Article 18 of the Constitution

[89] The relevant provisions in respect of arrest under ACA 2016 are set out in section 57:

57.(1) If the Chief Executive Officer or an officer of the Commission authorised by the Chief Executive Officer in that behalf, has reasonable grounds to believe that a person has committed or is about to commit an offence under this Act, the Chief Executive

Officer or the officer of the Commission, as the case may be, may request any police officer to arrest that person without a warrant.

(2) Where a person is arrested without warrant under subsection (1), that person shall be dealt with in accordance with section 101 of the Criminal Procedure Code (Cap 54).

Section 2(e) of Amendment Act 8 of 2019 of the ACA states:

“52A. Subject to this Act, the provisions of the Criminal Procedure Code (Cap. 54), the Police Force Act (Cap. 172) and any other law conferring on the police the rights, powers, authorities, privileges and immunities necessary for the detection, prevention and investigation of offences shall, so far as they are not inconsistent with the provisions of this Act or any other law, apply to the Chief Executive Officer and any officer authorised under section 22(2)(a) or 52(8) in the performance of their duties under this Act as if reference in those provisions to a police officer included reference to the Chief Executive Officer or officer of the Commission.”

[90] Section 52 A of the ACA was later amended by Amendment 2 of 2021 which reads as:

“Section 52A of the principal Act is amended, by repealing the words “section 22(2)(a) or 52(8)”, and substituting therefor the words “section 9(1)(b) or 9(3).”

[91] The Petitioner submits that his arrest on 18 November 2021 was unlawful and in contravention of Article 18 of the Constitution. The argument rests upon an alleged inconsistency between sections 57 and 52A of the ACA 2016 as amended by the 2019 Amendment. It is contended that section 57 expressly provides that where the Commissioner has reasonable grounds to believe that a person has committed an offence under the Act, the Commissioner may request a police officer to arrest that person without a warrant. The Petitioner further relies on section 3 of the ACA 2016, which provides that the provisions of the Act prevail over other written law, including the Criminal Procedure Code. It is submitted that section 57 therefore restricts arrest without warrant to police officers only. Since the Petitioner was arrested without warrant by Peter Bennett, an officer of the 7th Respondent who is not a police officer, the arrest is said to have been unlawful and contrary to Article 18.

[92] The ACCS submits the Petitioner was arrested under section 52A of the ACA powers granted to the Commission in August 2019. The ACCS argues that the provision deemed to the Commissioner or officers of the Commission all powers held by the police to prevent and detect corruption. It is submitted that section 57 of the ACA, provides authority by which the Commission can seek assistance from the Seychelles police force for arrest without warrant. These sections are not inconsistent as to their purpose.

- [93] The Court must therefore determine whether sections 52A and 57 are inconsistent, and whether the arrest effected by an authorised officer of the Commission was ultra vires.
- [94] It is the view of this Court that section 57 contemplates arrest by a police officer upon request from the Commission. However, section 52A, inserted by the 2019 amendment materially expanded the operational framework of the Act. It provides that the provisions of the Criminal Procedure Code, the Police Force Act and any other law conferring on the police the rights, powers, authorities, privileges and immunities necessary for the detection, prevention and investigation of offences, shall apply to the Chief Executive Officer and authorised officers of the Commission as if reference to a police officer included reference to such officers.
- [95] Arrest without warrant under section 18 of the Criminal Procedure Code is a power conferred upon police officers in connection with the investigation and prevention of offences. It is exercised upon reasonable suspicion and serves investigative purposes, including securing the attendance of a suspect, preventing the continuation of criminal activity, preventing interference with witnesses or evidence, and facilitating further inquiries. Such powers are intrinsically linked to the detection, prevention and investigation of offences and precede the prosecutorial stage of criminal proceedings.
- [96] The language of section 52A expressly extends to authorised officers of the Commission the same rights and powers conferred upon police officers under the Criminal Procedure Code and related legislation, insofar as they are necessary for detection, prevention and investigation. Arrest, as structured within the Criminal Procedure Code, forms part of that investigative framework. To construe section 52A as excluding the power of arrest would unduly restrict its scope and render its practical effect incomplete, particularly where arrest is one of the principal investigative tools available under the Code.
- [97] Section 57 and section 52A of the ACA should be read together. Section 57 enables cooperation with the police; section 52A expands the Commission's operational capacity.
- [98] In these circumstances, there is no contradiction between the two sections. Where the Commission elects to request police assistance, section 57 applies. Where authorised officers exercise investigative powers conferred through section 52A, including arrest

powers under the Criminal Procedure Code, such exercise is lawful provided it falls within the Commission's statutory mandate.

[99] In the present case, the Petitioner was arrested by an officer of the ACCS acting under statutory authority conferred by section 52A. There is no evidence before the Court that the officer lacked authorization under the Act, nor that the procedural requirements of the Criminal Procedure Code were disregarded. The arrest was effected in the course of an investigation into offences falling within the investigative powers of the ACCS at the material time.

[100] Article 18 of the Constitution requires that any deprivation of liberty be authorized by law and carried out in accordance with legal procedure. The Court is satisfied that, at the time of arrest, statutory authority existed for authorized officers of the ACCS to exercise arrest powers. The arrest of the Petitioner was therefore lawful and did not contravene Article 18 of the Constitution.

Issue 6

Whether the Petitioner's remand, in so far as it was founded upon charges instituted without lawful prosecutorial competence, constituted a violation of Article 19.

The Petitioner alleges that his continuous remand between 19 November 2021 and 6 May 2022, and the failure to withdraw charges pending legislative amendment, contravened Article 19. Remand decisions were made by an independent court established by law. There is no evidence that the remand proceedings themselves were procedurally unfair. It is clear that the remand proceedings and continuous remand between November 2021 and May 2022 were not based only on AML charges but also based on serious offences under the Penal Code which in the view of this Court would warrant a legitimate application for a remand into custody order. This Court could take notice that the Petitioner was also charged at the same time under the Firearms and Explosives Act for being in possession of a large quantity of firearms and explosives (Case CO 04/2022). Therefore the allegation that other charges which were alleged to be lacking prosecutorial competence had been intermingled with these valid and serious charges, does not make an application to remand into custody or the remand orders made in this case and during this period of time, unconstitutional as substantive serious and valid charges did exist at the time of remanding into custody. There is no allegation

against the Court in respect of the remand proceedings being unfair or being made without the petitioner being heard or being arbitrary in nature

Issue 7

Whether section 3(8) of the Anti-Money Laundering Act 2006 and the amendment to section 3(8) of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2020 are inconsistent with Article 19(4) of the Constitution.

[101] This Court has held in its ruling on preliminary objections (*Valabhji v The Republic & Ors* (CP 9 of 2022) [2025] SCCC 5 (27 June 2025)) the following:

“Firstly, with regard to the determination whether this petition is time-barred, we observe that the Constitutional Court in Valabhji v Republic & Ors (CP 14 of 2022) [2023] SCCC 7 (19 October 2023) has determined similar preliminary objection of the petition being time-barred. In that case, unlike in this instant case, the charges were withdrawn against the Petitioner and the court held that “once the charges were withdrawn any potential continuing contravention was completed”. Consequently, the Petitioner was obliged to file the constitutional petition within the prescribed three-month limitation period following the withdrawal, which was not done, nor was leave to file out of time sought. In the present case, however, the Petitioner remains subject to ongoing charges and is currently in remand. Consequently, we determine that whether alleged contraventions are of a continuing nature will have to be decided after the consideration of the facts and merits of the case and therefore should be decided at the end of the proceedings.”

[102] This Court observes that as per Annex A ‘existing charges’, Annex B ‘proposed amended charges’, and Annex C ‘proposed consolidated form of charges’, the Petitioner has not been charged under the AMLCFT Act 2020, thus as in *Valabhji v Republic & Ors* (CP 14 of 2022) [2023] SCCC 7 (19 October 2023) any potential continuing contravention was completed. This Petition was ^{filed} filed on 6 November 2022, stamped 18 November 2022. The Petitioner thus is not within the three-month limitation period, consequently, this prayer of the Petition is time-barred.

[103] This Court has already determined that any reference to section 3 (8) of the AMLCFT 2020 being unconstitutional is time barred. This Court observes that the relevant charge sheet to this petition dated May 2022 also does not make any mention of charges under 3(8) the said AML CFT Act 2020.

Issue 8

Whether the impugned legislative amendments and their enactment contravened Articles 85, 86 or 87 of the Constitution, or otherwise violated Articles 19 or 27 on grounds of abuse of legislative process or unequal protection of the law.

- [104] It is averred that the impuned Act was drafted by the 5th Respondent and passed by the National Assembly under the direction of the 4th Respondent. The amendment substantially expanded the powers of the 7th Respondent to investigate and take over investigations into additional offences under several chapters of the Penal Code.
- [105] The Petitioner contends that amendments to the Anti-Corruption Act, particularly Act 9 of 2022, were enacted with the purpose of facilitating his prosecution and were influenced by the executive in a manner inconsistent with Articles 19 and 27. It is argued that the President ought to have referred the Bill to the Constitutional Court under Article 87.
- [106] The Respondents submit that the amendments were passed in accordance with constitutional procedure and that legislative engagement between executive actions and the National Assembly forms part of ordinary governance. They deny that the enactment process was constitutionally defective.
- [107] Article 85 vests legislative power in the National Assembly. Article 86 sets out the procedure for passage and assent of Bills. Article 87 as set down below provides a mechanism whereby the President may refer a Bill to the Constitutional Court if of the opinion that it may infringe the Constitution.

Article 87.

(1) Where the President is of the opinion that a Bill presented for assent infringes or may infringe this Constitution, the President shall not assent to the Bill and, as soon as is practicable within fourteen days of the presentation of the Bill—

(a) advise the Speaker accordingly; and

(b) refer the Bill to the Constitutional Court for a decision in this respect.

- [108] There is no evidence before this Court that the procedural requirements of Article 86 were not complied with. The Bill was passed by the National Assembly and assented to by the President. The Constitution does not mandate referral to the Constitutional

Court in every instance; referral under Article 87 is contingent upon the President forming an opinion that the Bill may infringe the Constitution.

[109] The fact that the President did not refer the Bill does not in itself establish constitutional breach. The proper remedy for alleged constitutional violation of enacted legislation lies in the constitutional petition before this Court, which has now been exercised.

[110] The Petitioner has failed to demonstrate any procedural irregularity or constitutional defect in the enactment of Act 9 of 2022 under Articles 85, 86 or 87. Accordingly, the Court finds no violation of Articles 85, 86 or 87 of the Constitution.

[111] The Petitioner has also referred to Article 27 of the Constitution which reads as follows;

Article 27. Right to equal protection of the law

(1) Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.

(2) Clause (1) shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups.

[112] The essence of the Petitioner's arguments is that the legislative amendments, particularly Act 9 of 2022, were enacted in a manner that specifically targeted him and were designed to facilitate his prosecution. It is contended that the amendments were tailored to close "loopholes" in ongoing cases and therefore constituted discriminatory treatment and unequal application of the law.

[113] Although the petition refers to Article 27, the particulars do not identify any specific prohibited ground of discrimination, nor does the petition specifically allege differential treatment as compared to any identified class of persons similarly situated.

[114] The ACCS submits that Article 27 requires proof of discriminatory treatment arising from unreasonable classification or unjustifiable differentiation. Constitutional jurisprudence indicates that not every legislative differentiation amounts to discrimination and that the Petitioner must demonstrate treatment to his detriment relative to others in comparable circumstances. The impugned amendments are of general application. They apply to all persons within Seychelles who are investigated or prosecuted for corruption-related offences. The fact that the Petitioner falls within a class of persons affected by the amendments does not establish discrimination.

[115] The Petitioner has not demonstrated that he was treated differently from other persons similarly situated. The legislative amendments impugned in this petition are framed in general terms and apply to all persons subject to investigation or prosecution for corruption and related offences. The mere fact that legislation affects an ongoing prosecution does not, without more, establish discriminatory treatment.

[116] Allegations that legislation was politically motivated or enacted in response to particular investigations do not, without concrete evidence of unequal application or selective enforcement, amount to a violation of Article 27.

[117] Accordingly, the Court finds that the Petitioner has failed to establish any violation of Article 27 of the Constitution.

Issue 9

Whether the removal of the requirement for Attorney-General consent to prosecution under the Anti-Corruption Act contravenes Article 76 of the Constitution.

[118] The Petitioner firstly alleges violation of Article 76 in the allegation that the criminal prosecution powers by an authority other than the Attorney General must be with the consent of the Attorney General (see para 76(I) of the Petition). It is contended that Article 76 vests exclusive prosecutorial authority in the Attorney-General and that any prosecution instituted by another authority must be with the consent of the Attorney-General. It is argued that amendments to the Anti-Corruption Act removing the requirement of Attorney-General consent contravene Article 76 and amount to a constitutional usurpation of prosecutorial power.

[119] The ACCS submits that Article 76 does not confer exclusive prosecutorial authority on the Attorney-General. Rather, it confers supervisory and overriding powers, including the power to institute proceedings, to take over proceedings instituted by another authority, and to discontinue such proceedings. It is further submitted that Article 76(4)(b) expressly contemplates that criminal proceedings may be "instituted or undertaken by any other person or authority." The existence of such wording demonstrates that the Constitution recognizes the permissibility of statutory prosecutorial bodies other than the Attorney-General.

[120] Relevant provisions in Article 76 of the Constitution state:

(4) The Attorney-General shall be the principal legal adviser to the Government and, subject to clause (11), shall have power, in any case in which the Attorney-General considers it desirable so to do—

(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken under subclause (a) or by any other person or authority.

(5) The powers of the Attorney-General under clause (4) may be exercised by the Attorney-General in person or by subordinate officers acting in accordance with the general or special instructions of the Attorney-General.

(6) Subject to clause (7), the power conferred on the Attorney-General by clause (4)(b) to take over any proceedings or by clause (4)(c) to discontinue any proceedings shall be vested in the Attorney-General to the exclusion of any other person or authority. (7) Where a person or authority, other than the Attorney-General, has instituted criminal proceedings, nothing in clause (6) shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

[121] The interpretation of Article 76 must be undertaken in accordance with its plain wording and constitutional structure. Article 76(4) provides that the Attorney-General shall have power: to institute criminal proceedings; to take over and continue proceedings instituted by any other person or authority; and to discontinue proceedings instituted by the Attorney-General or by any other person or authority.

[122] The express reference to proceedings instituted “*by any other person or authority*” is constitutionally significant. It demonstrates that the Constitution expressly envisages the possibility of criminal proceedings being initiated by bodies other than the Attorney-General. Article 76 does not state that prosecutions by other authorities require prior consent of the Attorney-General. Nor does it confer exclusivity of institution upon the Attorney-General. Instead, exclusivity is conferred only in relation to the powers to take over and discontinue proceedings [Article 76(6)]. Article 76 therefore establishes that the Attorney-General is the principal prosecutorial authority; has supervisory and overriding role; has the power to intervene in prosecutions instituted by other lawful authorities.

[123] The amendments to the Anti-Corruption Act removing the requirement of Attorney-General consent do not revoke or diminish the constitutional powers of the Attorney-General under Article 76(4). The Attorney-General retains the power to take over or discontinue proceedings at any stage before judgment.

[124] Accordingly, this Court finds that Article 76 does not require prosecutorial bodies other than the Attorney-General to obtain prior consent, unless statutorily provided for. It is the considered view of this Court that the impugned amendment does not violate Article 76 of the Constitution.

Issue 10

Whether the alleged prejudicial public statements, attempted intimidation, or involvement of armed personnel gave rise to violations of Articles 19 or 27 of the Constitution.

a) Alleged prejudicial public statements

[125] The Petitioner alleges that public statements made by certain officials namely 2nd and 3rd Respondents and 7th Respondents, pre-judged his guilt and undermined the presumption of innocence guaranteed under Article 19(2)(a). It is further alleged that such conduct contravened Article 27, which guarantees equal protection of the law.

[126] The ACCS submits that the Petitioner's trial will be conducted before professional judges who are constitutionally independent and impartial. It contends that public commentary does not compromise judicial independence and that no concrete prejudice has been demonstrated.

[127] Article 19(2)(a) guarantees that every person charged with an offence is innocent until proven guilty. Persons holding high public office must exercise caution in commenting on ongoing proceedings. However, the existence of public commentary does not automatically render a future trial unfair. The Petitioner's trial is to be conducted before professional judges bound by constitutional oath and judicial independence. No evidence has been adduced that the trial court has been compromised or is incapable of impartial adjudication disregarding extraneous commentary. There is further no evidence that any court has treated the Petitioner as guilty prior to conviction.

[128] With respect to Article 27, the Petitioner has not demonstrated differential treatment as compared to other persons similarly situated, nor has he established discrimination on any prohibited ground.

[129] The Court therefore finds no violation of Articles 19 or 27 arising from alleged prejudicial statements.

b) Attempted intimidation/forced confession violated Article 19(2)(g)

[130] The Petitioner alleges that the presence of armed personnel during his arrest and detention was intended to intimidate him and to force him to confess, thereby violating Article 19(2)(g), which provides that a person shall not be compelled to testify at trial or confess guilt.

[131] The Respondents, through affidavit evidence deny that any directive was issued to intimidate the Petitioner or to elicit a confession. It is further averred that the personnel present were engaged for security purposes only. It is also uncontested that the Petitioner did not provide any confession.

[132] Article 19(2)(g) of the Constitution protects against compulsion to testify or confess guilt. The protection is engaged where there is evidence of coercion, threats, or improper inducement. In the present case, no evidence has been adduced demonstrating that the Petitioner was compelled to testify or confess. The fact that no confession was made further undermines the allegation of coercion. This Court accordingly finds that no violation of Article 19(2)(g) has been established..

c) Alleged Involvement of Armed Foreign Personnel

[133] The Petitioner avers that during the course of his arrest, detention and transportation to Félicité Island, armed personnel were present, including individuals whom he believed to be foreign nationals.

[134] The Court observes, however, that the Petition does not clearly identify the alleged presence or involvement of foreign personnel as constituting a distinct or standalone violation of any specific constitutional provision. No separate prayer is sought in relation to that allegation alone. The allegation appears to be relied upon in support of other constitutional claims.

[135] To the extent that the Petitioner relies on these factual assertions in support of those constitutional grounds, the Court has already addressed and determined those issues separately in this judgment. The mere presence of foreign or armed personnel, without a clearly articulated constitutional interconnection and without evidence demonstrating how such presence infringed a protected right, does not by itself disclose a justiciable constitutional violation.

[136] A constitutional petition must identify with sufficient precision the right alleged to have been infringed and the manner of its infringement. The Court is not required to speculate as to possible constitutional implications in the absence of a clearly pleaded claim.

[137] Accordingly, insofar as the petition relies on the alleged involvement of foreign personnel as an independent ground of constitutional complaint, the Court finds that no specific constitutional violation has been properly articulated or established.

Issue 11

Whether the Petitioner is entitled to an order for removal of the restrictions imposed on the assets of the Petitioner and entities in which he holds an interest.

[138] The Petitioner seeks an order for the removal of all restrictions entered against his assets and those of entities in which he holds an interest. The Court observes that asset restriction measures arise within the framework of ongoing criminal proceedings. Such measures are subject to the supervision of the Trial Court, which is best placed to assess their necessity, proportionality, and continued justification in light of the evidence before it. In the present case, the Petitioner has not demonstrated that the imposition or continuation of the asset restrictions was unlawful, arbitrary, or effected in breach of any specific constitutional provisions. The mere existence of such restrictions, in the context of ongoing proceedings involving serious allegations, does not of itself amount to a constitutional violation.

[139] Further, to the extent that the Petitioner seeks to challenge the propriety or scope of the asset restrictions, the appropriate avenue lies before the Trial Court seized of the criminal proceedings and/or Trial Court which has issued such orders and retains jurisdiction to vary or discharge such orders upon proper application.

[140] Accordingly, this Court finds no basis upon which to grant the relief sought, and this prayer too is dismissed.

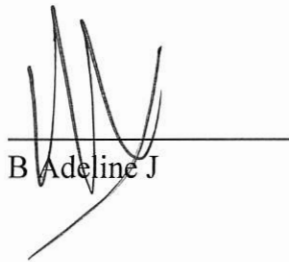
Conclusion

[141] For all the aforementioned reasons this Court finds no merits in the alleged constitutional violations set out in the prayers to the petition and proceeds to dismiss same. Both parties to bear their own costs.

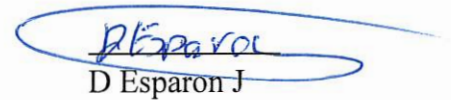
Signed, dated and delivered at Ile du Port on 14 May 2026.



Burhan J
(Presiding)



B Adeline J



D Esparon J