

## CONSTITUTIONAL COURT OF SEYCHELLES

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**Reportable**  
CP11/2022

In the matter between:

**FABIO SOOPRAMANIEN**

**1<sup>st</sup> Petitioner**

**DARIO SOOPRAMANIEN**

**2<sup>nd</sup> Petitioner**

**GERARD BASTIENNE**  
(rep. by Alexia Amesbury)

**3<sup>rd</sup> Petitioner**

and

**THE REPUBLIC**

**1<sup>st</sup> Respondent**

**THE ATTORNEY GENERAL**  
(rep. by Adam Afif)

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Fabio Soopramanien & Ors v The Republic & Anor* (CP11/2022) (01 July 2025).

**Before:** M Burhan J, G Dodin J and B Adeline J

**Summary:** Constitutional challenge of Section 30 (2) of the Prisons Act; remission in cases of aggravated MODA 2016 offences

**Heard** Written and oral submissions

**Delivered:** 01 July 2025

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### **ORDER**

The Petition is dismissed. Each party to bear their own costs

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### **JUDGMENT**

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**M BURHAN J (Presiding), G DODIN J and B ADELINE J concurring**

[1] The Petitioners filed this petition under Article 46(1) of the Constitution seeking the following reliefs:

- (i) *interpret the rights in question in a manner which is consistent with international obligations relating to human rights;*
- (ii) *declare that the rights of the Petitioners under Articles 16, 27 (1) and (2) and 19 (4) are likely to be contravened by Section 30 (2) of the Prison Act 1990 and further provide that reasons must be advanced for denial of remission;*
- (iii) *declare that Section 30 (2) of the Prison Act is null and void;*
- (iv) *declare that Section 31 (1) of the Interpretation and General Provisions Act is null and void; and*
- (v) *make any other declaration or order it may consider appropriate for the purpose of enforcing or securing the enforcement of Charter rights.*

#### **The Petitioners' Case**

- [2] The Petitioners as mentioned in the petition are convicts who are serving prison terms totaling 30 years each. The Petitioners were convicted and sentenced on their own plea of guilty in respect of three charges in CR 113/115 of 2021, namely: conspiracy to import 150kgs of cannabis; conspiracy to import an unknown quantity of heroin; and, human trafficking.
- [3] It is the contention of the Petitioners that based on their status as convicts, they each belong to a group of disadvantaged persons and the only permissible differential treatment is one that will ameliorate their conditions as provided by Article 27 (2) of the Constitution. Against this, it is their contention that Section 30 (2) of the Prisons Act of 1991 (Prisons Act) as amended by Prisons (Amendment) Act, 2016 does not ameliorate their conditions given that it denies them remission, to which all prisoners were entitled to prior to the 'amendment of the Prisons Act'.
- [4] Further to the above, it is the contention of the Petitioners that they are serving a sentence under the Misuse of Drugs Act of 2016 (MODA 2016) as opposed to the repealed Misuse

of Drugs Act of 1990 (MODA 1990). That in the circumstances, Section 30 (2) of the Prisons Act is redundant and must be repealed.

- [5] In addition to this, the Petitioners contend that if Section 30 (2) of the Prisons Act is not repealed, its operation would be a contravention or likely a contravention of Article 27 (1) and (2) of the Constitution. The Petitioners also refer to Article 19 (4) of the Constitution which provides that:

*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.*

- [6] The Petitioners argue that against the rights conferred under Article 19 (4) above, a sentence of 30 years imprisonment which includes a 15 year default sentence and a fine of SCR 3.4 million, without the benefit of remission, is severe in degree. That such severity violates the rights conferred on the Petitioners under Article 19 (4) of the Constitution. It is further submitted that the severity of the sentence imposed and violation of rights under 19 (4) must be understood against the backdrop of a now repealed MODA 1990, which brought the 'amendment to the Prisons Act 1991'.
- [7] It is the contention of the Petitioners that MODA 2016 was intended to be less severe in terms of sentencing for drug related offences. That the intention to be less severe is evidenced by Section 51 (1) of MODA 2016, which gives the Courts the provision to review sentences. Therefore, to maintain the operation of Section 30 (2) of the Prisons Act 1991 as amended goes against the spirit of MODA 2016, whose objective is to 'promote the treatment, education, rehabilitation, recovery and social re-integration of drug users and drug dependent persons.'
- [8] The Petitioners also argue that Section 30 (2) of the Prisons Act 1991, differentiates them as they will fail to enjoy remission as enjoyed by other prisoners thereby receiving treatment contrary to Article 16 of the Constitution. In addition to the above, it is the argument of the Petitioners that Section 31 (1) of the Interpretation and General Provisions

Act of 1976, predates the present-day Constitution of Seychelles and therefore should be declared null and void pursuant to Article 5 of the Constitution.

- [9] Further to the arguments advanced above in respect of discrimination prohibited under Article 27, the Petitioners also refer to Schedule 5 of the Constitution which relates to the investigative powers of the Ombudsman. The reliance on the provisions of Schedule 5 is justified by the Petitioners as the Constitution, as the supreme law, is to be read as a holistic document and any other law found to be inconsistent with it, should be declared null and void.
- [10] The Petitioners have also brought to the attention of this Court, the Seychelles' international obligations under the African Charter on Human and People's Rights, the African Charter on the rights and Welfare of the Child and the International Covenant on Civil and Political Rights and its Optional Protocol. They argue that the African Charter on the Rights and Welfare of the Child must be especially considered in view of how the 30-year sentence affects nine minor children who will grow up without ever having their fathers with them.
- [11] Based on the aforementioned grounds the Petitioners seek the reliefs set out in [1] herein.

### **Respondents' Case**

- [12] The Respondents in their submissions submit that most of the issues before this Court in this case have already finally determined by the Seychelles Court of Appeal. In Casime & Anor v R (SCA 7 of 2019) [2020] SCCA 16 (21 August 2020) the Seychelles Court of Appeal considered Section 32 of the Interpretation and General Provisions Act (IGPA), and held that where an Act repeals and reenacts, with or without amendment, any provision of a former written law, then—unless a contrary intention is expressed—any express or implied reference in some other law to the repealed provision shall be read as a reference to the reenacted provision. Learned Counsel for the Respondents respectfully requested the Court not to lose sight of the fact that the Supreme Court and Constitutional Court are bound by Court of Appeal rulings, which already determined the issue. Thus, even convincing rulings by other jurisdictions can be overruled by binding precedent

promulgated by Seychelles' Court of Appeal itself. The other submissions of the Respondent will be considered in the analysis of the merits of the case.

### **Analysis and Findings**

- [13] Giving due consideration to the aforementioned facts set out in their pleadings and the submissions made by both parties, this Court observes at the very outset that the main findings of the Court of Appeal in *Casime* in relation to remission was that section 30(2)(b) of the Prisons Act applies to MODA 2016 (not just MODA 1990) and that 'to amend' includes "*repeal, revoke, cancel, delete and replace, in whole or in part, add to, vary, and the doing of any two or more of any such things simultaneously or in the same Act*". The relevant paragraphs are cited:

*"now address issue (ii) arising in the appeal- Whether or not the appellants are entitled to benefit from remission of their sentences.*

*It was submitted by the appellants' counsel that because Section 30 (2) (supra) refers to the MODA 1990 and not MODA of 2016, remission applied. I do not agree with counsel's view for the following reasons:*

*First, I take note of the fact that the Prisons Act was amended in April 2016, which period was before the coming into operation of the 2016 MODA. The commencement date of MODA 2016 was 20th June 2016. There is no doubt that reference was made to MODA 1990 because it was the law in operation then. The Legislature could not have referred to legislation which had not yet come into force.*

*Furthermore, in interpreting an Act of Parliament, Court should be guided by the Mischief Rule. A look at the Long title of MODA 2016 clearly indicates that the purpose of the Act was to provide for more effective measures to deal with drug related crime. It would be an absurdity if this Court were to make a finding that the Legislature intended to provide for more lenient sentences in an Act of Parliament aimed at strengthening mechanisms for dealing with the crimes.*

*Even more important however are several provisions of the Interpretation and General Provisions Act. Section 24 thereof states that: "A reference in an Act to the Constitution, an Act ... is a reference to the Constitution, the Act ... as from time to time amended." And under Section 22 (1) thereof which deals with meaning of words in Acts, it is provided that:*

*"amend" includes repeal, revoke, cancel, delete and replace, in whole or in part, add to, vary, and the doing of any two or more of any such things simultaneously or in the same Act;*

*The reference to the Misuse of Drugs Act 1990 in the Prisons Act is thus a reference to the Misuse of Drugs Act 2016.*

*Further still we must also be guided by Section 30 (2) (a) of Interpretation and General Provisions Act which is to the effect that: "Where an Act repeals and re-enacts with or without modification, any provisions of a previous written law then, unless the contrary intention appears, any reference, whether express or implied, in any other written law to the provision so repealed shall be construed as a reference to the provision re-enacted."*

*Arising from the above, it must be concluded that Section 30 (2) of the Prisons Act applies to persons convicted of an aggravated offence under MODA 2016 ."*

[14] It would also be pertinent at this stage to set out the case law in our jurisdiction prior to discussing the Kenyan case relied on by learned Counsel for the Petitioners, namely *Sammy Musembi Mbugua & 4 others v Attorney General & another* [2019] eKR.

[15] In *Bouchereau & Ors v Supt of Prisons & Ors* (SCA 1 of 2013) [2015] SCCA 3 (17 April 2015) the findings of the Court of Appeal may be summarised as follows: discrimination or classification of prisoners is constitutional if it has a rational basis or a legitimate state objective; it is rational for the State to provide a deterrent for serious offences, and removal of remission can be construed as meeting that objective; remission is a privilege; remission or non-remission is not a sentence, but a privilege or a discretionary measure; and the *"removal of remission for serious drug offences is a measure of social protection providing a deterrent against the appellant reoffending and also for the protection of society against the scourge of those trafficking in drugs; there is no discrimination."* It held that:

*[11] In applying this test to the instant case, it is rational that the State provides a deterrent for serious offences and the removal of remission in sentences can be legitimately construed as meeting that objective. The second ground of appeal is therefore also rejected.*

*[14]. . . Remission, a privilege, was not granted because it had been withdrawn by legislation in some limited circumstances, one of which included sentences for drug trafficking. This did not mean the penalty imposed (that is the sentence of 8 years) was increased ex post facto or retroactively. It just means the privilege of applying a remission of one third of the period of their imprisonment was not applied in the case of the Appellants as was the case for all other drug offenders after the coming into effect of the amendment to the Prisons Act.*

*[15] In Ars v Canada UN Doc CCPR/C/14/D/91/1981, the claimant argued that the reintroduction of parole with mandatory supervision under the Canadian Parole Act constituted a heavier penalty in breach of article 15 (1) of the Covenant. The Human Rights Commission (HRC) disagreed, finding that mandatory supervision cannot be equated with penalty as it was a measure of social protection in the prisoner's own interest. Similarly and on a parallel to Ars, the removal of remission for serious drug offences is a measure of social protection providing a deterrent against the appellant reoffending and also for the protection of society against the scourge of those trafficking in drugs.*

[17]. . . . Remission or non-remission of sentence are not penalties but a privilege to a prisoner or a discretionary measure allowed in certain circumstances by the prison authorities. These grounds of appeal are also therefore rejected.(emphasis added)

- [16] In the case of *Bradburn & Anor v Superintendent of Prisons & Anor* (CP 9 of 2010) [2012] SCCC 4 (12 June 2012) the Constitutional Court held as follows: grant of remission is a conditional privilege, not a constitutional right; intention of the legislature was to not extend benefit of remission to all prisoners convicted under Misuse of Drugs Act 1990 (MODA) “*taking into account the public revulsion felt against certain types of crime such as drug offences*”; hence the amendment to section 30(2) of the Prisons Act (to exclude aggravated MODA offences from remission) is not discriminatory. The court held:

“ . . . In any event, grant of remission to a prisoner is nothing but a conditional privilege, which may be granted if and only if the prisoner concerned had been industrious and of good behaviour while in prison. Those who are given that privilege will lose it as a punishment for idleness, lack of industry or other offence against prison discipline. Therefore, no prisoner can claim remission as of right constitutional or otherwise and so we find.

....

We also find that the intention of the legislature in amending section 30(2) was simply not to extend the benefit of remission on sentences to all prisoners convicted and sentenced under the Misuse of Drugs Act 1990. Undoubtedly, the amendment has universal application and stipulates no discrimination or classification among persons who are convicted and sentenced under the Misuse of Drugs Act 1990 as they all fall within a class by themselves as compared to other prisoners.

This amendment simply relates to the administrative policy and regulations of prisons, which is very much within the competence and powers of the Legislature. It has unfettered discretion to legislate on prison security and policy issues, taking into account the public revulsion felt against certain types of crime such as drug offences, robbery with violence, murder etc.

We agree with the contention of the respondents that the Constitution does not place any bar or limitation on the competence of the Legislature to formulate a prison policy and make laws for its administration in the larger interests of the community.

This amendment did not create any new offence nor did impose any penalty for any drug offence that is more severe in degree or description than the maximum penalty that has already been prescribed for the offences under the Misuse of Drugs Act.

Besides, we find that the said amendment or refusal by the Prison Authority to grant remission to the petitioners does not contravene any of the provisions of the Constitution or any constitutional right of the petitioners (emphasis added).

- [17] The Kenyan case *Sammy Musembi Mbugua* relied on by the Petitioners provides the *ratio decidendi* at [41]:

*41. In my view, the differentiation in treatment of persons sentenced to determinate periods from those facing indeterminate sentences is justifiable where it is not possible to calculate what would be the period of remission. However, where the sentence is certain and determinate, such differentiation cannot be legitimate. The question that one asks is whether such differentiation bears a rational connection to a legitimate purpose. I agree with the Petitioners that the purpose of remission is to act as an incentive to the prisoner and encourage good behaviour, rehabilitation and self-improvement if a prisoner knows that his or her conduct directly affects his or her jail-term thus placing his or her destiny in his or her own hands*

*47. However, as appreciated by the Petitioners, the power to grant remission should not be confused with the right to remission. While there is a right to remission, the power to exercise it and the circumstances under which it is to be exercised must remain as provided for under section 46 of the Prisons Act. Just like my learned brother in the above case, I find that the only part of section 46(1) of the Prisons Act that is unconstitutional is that which denies remission to persons sentenced to imprisonment for an offence under section 296(2) of the Penal Code.( emphasis added).*

- [18] Firstly, this Court observes that the Kenyan High Court held that “*there is a right to remission, the power to exercise it and the circumstances under which it is to be exercised must remain as provided for under section 46 of the Prisons Act.*” At 22 and 23 the Court refers to remission as a “reward”:

*22: This is understandable because remission is a reward for industry and good conduct and a person who is in hospital through own fault cannot be termed as being industrious while a person undergoing confinement as a punishment is definitely not of good conduct. Based on the same reasoning, a prisoner may lose remission as a result of its forfeiture for an offence against prison discipline.*

- [19] The Kenyan High Court has held that remission constitutes a reward, yet there exists a right to remission, albeit conditional right, as the power to grant remission is vested in the Commissioner-General of Prisons. This could be interpreted to mean that there is a right to be considered for remission, while the actual granting of remission remains a discretionary reward.

- [20] Considering our Courts’ interpretation in the Seychelles jurisdiction, it seems that *Bradburn* states that “*grant of remission to a prisoner is nothing but a conditional privilege*”, in *Bouchereau* the Court stated: “*Remission, a privilege, was not granted because it had been withdrawn by legislation in some limited circumstances, one of which*

*included sentences for drug trafficking.*” Our Courts findings that remission is a privilege pertains to the act of granting remission itself. There is no explicit determination as to whether the right to be considered for remission exists as a separate entitlement.

- [21] Further, the Kenyan High Court views remissions as an *“incentive to the prisoner and encourage good behaviour, rehabilitation and self-improvement if a prisoner knows that his or her conduct directly affects his or her jail-term thus placing his or her destiny in his or her own hands.”* In its reasoning the High Court appears to put significant emphasis on the role remission plays in the rehabilitation of the convict.
- [22] To understand where rehabilitation is placed in the criminal justice system, it is important to first appreciate the notion of punishment and the leading theories in this regard. The author Mathew Altman states that: *“Punishment is the imposition of burdens by a recognized authority because someone has violated a rule that was acknowledged or should have been acknowledged as a rule.”*<sup>1</sup> This brings us to the theories of punishment in the criminal justice system, the leading ones being deterrence, retribution and rehabilitation.<sup>2</sup> Proponents of the deterrence theory say that people must be deterred from committing crimes and therefore the threat of punishment suffices for this purpose.<sup>3</sup> The retributivists maintain that criminals deserve punishment in proportion to their crime.<sup>4</sup> The rehabilitative theory suggests that that punishment should aim to *“reform offenders and assist their transition from criminal to law-abiding citizens.”*<sup>5</sup>
- [23] Since the rehabilitative theory suggests that the aim should be to reform offenders, the forms in which this takes place is by the form of programs in prisons, the purpose of which is tailored according to the type of offence and the offender's perceived needs.<sup>6</sup> These

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<sup>1</sup> Altman M *A theory of legal punishment: deterrence, retribution and the aims of the State* (2021) (Routledge: New York) p. 35.

<sup>2</sup> See generally Mujuzi J ‘The Supreme Court of Mauritius and the Objectives of Punishment in Sentencing Offenders to Penal Servitude for Life and to Other Lengthy Prisons Terms in Drugs Related Cases: A Look at Recent Case Law’ *University of Mauritius Research Journal* Vol. 15 (2009) pp. 635-650.

<sup>3</sup> Brooks T *Punishment: A critical introduction* (2021) (2<sup>nd</sup> Edition, Routledge: New York) p.46.

<sup>4</sup> Brooks T (2021) p.18.

<sup>5</sup> Brook T (2021) p.

<sup>6</sup> Forsberg L & Douglas T ‘What is Criminal Rehabilitation?’ *Criminal Law and Philosophy* Vol. 16 (2022) p. 106.

programs include ‘education, vocational training, psychological/behavioural interventions, and interventions addressing offenders’ addiction problems.’<sup>7</sup>

- [24] The Ministry of Justice of the United Kingdom in its ‘Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders’ 2010 report presented to the Parliament, provided a multifaceted approach to rehabilitating offenders,<sup>8</sup> remission of which was not a considered a policy approach relevant in this regard.
- [25] Remission is therefore not in itself a tool for rehabilitation, but instead, a privilege afforded to those who show signs of rehabilitation by good behaviour in the prisons.
- [26] It is our considered view that, individuals should be aware that their conduct before the commission of a crime directly affects their freedom and potential jail-term and it is at that time that they have the opportunity to ‘hold their destiny in their hands’ by committing the crime or not. Once their actions lead them to commit the crime that harms others and/or society, their destiny is no longer entirely in their hands. It is prior to committing the crime that an individual should think of the consequences such a crime would bring to themselves and their close family members.
- [27] In *Sammy Musembi Mbugua* the Kenyan High Court justified why remission was not available to persons serving life terms by explaining that it is mathematically impossible to calculate remission for those serving life sentence, as it is not a determinable duration (unlike in some jurisdiction where life sentence is defined as a fixed number of years).
- [28] This explanation however, raises the question: is reasoning based on impossibility of calculation, sufficient to justify why remission is not allowed? According to *Sammy Musembi Mbugua* reasoning, this outcome does not stem from a legislative determination that convicts of certain crimes should not be released at all, but rather from the practical impossibility of calculating remission. If one is to consider the theories of punishment in the criminal justice system referred to above, namely deterrence, retribution and rehabilitation, the better explanation as to why life sentences are given for certain crimes

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<sup>7</sup> Forsberg L & Douglas T (2022) p. 106.

<sup>8</sup> Report available at <https://assets.publishing.service.gov.uk/media/5a74b433e5274a3cb2866813/breaking-the-cycle.pdf> (accessed 8 September 2024).

may well be that the legislature has determined that for certain offences, the convict shall not be released and must remain isolated from society for life. Such a life sentence without possibility of remission implies that the crime is considered so serious that, the convict will not be reintegrated and will remain isolated indefinitely. This reasoning is more in line with the principle of sentencing namely deterrence. Therefore, in such situations the severity of the offence is such that remission is not granted. This reason is more in line with the principles and theories of sentencing, rather than justifying remission not being granted on the basis of the mathematical impossibility of calculating remission. This is further supported by the fact that, at the time of sentencing, one is focusing on the behaviour of the person, albeit before conviction, since it is the person's conduct at the time of committing the crime that could lead to the imposition of a life sentence with no remission.

- [29] The legislature in the Seychelles through Section 30(2)(b) of the Prisons Act, has made a deliberate policy choice to exclude certain categories of offenders, such as those serving life sentences or convicted of aggravated drug offences, from eligibility for remission. This reflects a considered view that, for these offences, the seriousness and public interest in deterrence outweigh the benefits of early release, even if rehabilitation is possible. As set out in *Bouchereau*:

*[11] In applying this test to the instant case, it is rational that the State provides a deterrent for serious offences and the removal of remission in sentences can be legitimately construed as meeting that objective. The second ground of appeal is therefore also rejected.*

- [30] This exclusion does not, in itself, remove the possibility of rehabilitation; rather, it reflects that for certain serious offences, the privilege of possible remission has been deliberately withheld. More fundamentally, a person who values their liberty should be motivated not to commit serious offences in the first place. In *Payne v Lord Harris of Greenwich (1981)* 2 All ER 842 (HL) at 850, the Court stated:

*"A person sentenced to imprisonment could not expect to be released before the expiry of his sentence. Since the introduction of parole he may hope that part of his sentence may be served outside prison. If his offence was of a heinous kind, even that hope will be a frail one."*

- [31] Case law suggests that differential treatment is constitutionally permissible where it is justified. This Court is in agreement with the Respondents that, in cases involving

aggravated MODA offences, exclusion from remission is justified for the reasons outlined in those judgments. One of the key justifications is that the legislature is responding to the continued prevalence and severity of drug-related crimes in Seychelles, despite increased sentencing thresholds.

[32] It is our considered view that, at the same time, the rehabilitative provisions in MODA 2016 exist and is primarily aimed at offenders who are drug users, offering support for their recovery and reintegration. The statute, however, imposes stricter penalties for serious drug-related offences, and this indicates the legislature's approach: tougher on traffickers and suppliers, supportive toward users. This distinction was not apparent in MODA 1990, hence the provision for review of sentences imposed under MODA 1990 was introduced in MODA 2016.

[33] It is clear from the analysis of the aforementioned case law and law that the Courts in Seychelles have adopted a more balanced approach in assessing the constitutionality of Section 30(2) of the Prisons Act read in conjunction with MODA 2016. They consider the combined objectives of deterrence, rehabilitation, and retribution as set out above in relation to both aggravated and non-aggravated offences. The decision of the Kenyan High Court places greater emphasis on rehabilitation alone and therefore stands in contrast to the approach adopted in the Seychelles jurisdiction. To adopt such reasoning would risk departing from the principles in interpretation already established by the Court of Appeal in the *Casime* and *Bouchereau* case.

[34] Article 27(2) of Constitution reads as follows;

*"Clause (1) shall not preclude any law, programmes or activity which has as its objects the amelioration of the conditions of disadvantaged persons or groups."*

[35] It is the contention of learned Counsel for the Petitioners that the Petitioners, being prisoners, are disadvantaged persons. This Court is of the view that disadvantaged persons are individuals facing challenges such as disabilities, poor education, mental health issues, substance use disorders, and homelessness, to name a few. There are prisoners who suffer from such disadvantages and they may be considered as disadvantaged persons or disadvantaged groups within the prison system. However, this Court cannot accept learned

Counsel's contention that principal drug dealers who illegally import large quantities of Class A and Class B controlled drugs into the country, can be considered to be 'disadvantaged persons' when legally imprisoned by a Court and thus fall within the category set out in Article 27(2) of the Constitution. For learned Counsel to classify them as such is adding insult to injury.

[36] In *Bouchereau & Ors (supra)* at [10] it was held:

*[10] In this regard we endorse the findings of the Constitutional Court that the right to equal protection translates into the State treating an individual in the same manner as others in similar conditions and circumstances. A distinction or classification is constitutional if it has a rational basis or a legitimate state objective. Discrimination or classification based on race, colour, gender or status is generally suspect and will be strictly scrutinised by the court as will classification that interferes with rights protected under the Charter. However, where the discrimination or classification has a rational basis or where the state has a rational interest in making the distinction then the qualification will pass the Court's scrutiny. (emphasis added).*

[37] In the view of this Court, the classification of such persons based on the serious nature of the offence, including aggravated offences under the MODA 2016, and differentiating between them and those committing less serious offences is reasonable in the circumstances and would, in the view of this Court, achieve the objective of the amendment, which is to serve as a deterrent to persons dealing in serious drug offences. Therefore, this Court is satisfied that the classification of persons set out in the above case law is acceptable and not discriminatory in nature, as contended by learned Counsel for the Petitioner. Therefore the impugned law should be upheld by this Court as the differentiation has been held to be rational.

[38] In the analysis of whether section 30(2) of the Prisons Act contravenes Article 27(1) and (2), it is our considered view that Section 30(2) does not contravene Article 27, because: the differentiation is rational, and tied to legitimate penal objectives. Further, remission is a privilege, not a right; and international treaties do not prohibit such exclusions. Article 27(1) permits discrimination provided it is necessary in a democratic society.

[39] When one considers the international law such as the Mandela Rules (Rule 95), this Court observes it recognises that privileges can be afforded to the different classes of prisoners

with the aim to encourage good conduct among other things. As earlier stated, remission is a privilege and by making use of the Mandela Rules, it is a privilege which is appropriate for the *different classes* of prisoners. The Mandela Rules are in no way saying privileges must be given to all prisoners. Section 30(2) of the Prisons Act read with MODA 2016 distinguishes which class of prisoners are not entitled to such privileges based on reasonable and intelligible differentia as explained earlier herein. In *Bouchereau* it was held:

*In Ars v Canada UN Doc CCPR/C/14/D/91/1981, the claimant argued that the reintroduction of parole with mandatory supervision under the Canadian Parole Act constituted a heavier penalty in breach of article 15 (1) of the Covenant. The Human Rights Commission (HRC) disagreed, finding that mandatory supervision cannot be equated with penalty as it was a measure of social protection in the prisoner's own interest. Similarly and on a parallel to Ars, the removal of remission for serious drug offences is a measure of social protection providing a deterrent against the appellant reoffending and also for the protection of society against the scourge of those trafficking in drugs. (emphasis added)*

[40] Learned Counsel for the Petitioner further submitted that it is unfair to deny remission, as remission is not denied to other serious Penal Code offences that attract terms of life imprisonment. It is to be kept in mind that MODA is a Special Act brought in to curb the scourge of the drug menace in the Seychelles. Therefore, it cannot be said that it creates an unreasonable distinction between the same class or similarly situated prisoners. Further, for reasons set out herein already, it cannot be said that Section 30(2) of the Prisons Act embodies a punitive philosophy that precludes possibilities of rehabilitation or creates unreasonable distinctions between similarly situated prisoners.

[41] Further, this Court is satisfied that Section 30(2) of the Prisons Act did not create any new offence, nor did it impose any additional penalty for any drug offence that is more severe in degree or description than the maximum penalty that has already been prescribed for the offences under the Misuse of Drugs Act. The contention of the Petitioner that Section 30(2) of the Prisons Act contravenes Article 19 (4) of the constitution therefore bears no merit. This Court is in agreement with the findings in *Bradburn* case which held:

*This amendment did not create any new offence nor did impose any penalty for any drug offence that is more severe in degree or description than the maximum penalty that has already been prescribed for the offences under the Misuse of Drugs Act.*

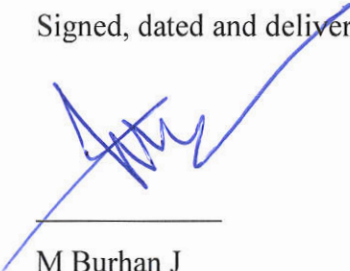
[42] In light of the foregoing analysis and case law, this Court is of the view that Section 30(2) of the Prison Act does not contravene Articles 27, or 16 and 19 of the Constitution. The exclusion of remission for certain offences, particularly aggravated drug offences, reflects a deliberate legislative policy grounded in rational penal objectives, namely deterrence, retribution, the seriousness of the offence, and the safety of the public.

[43] While comparative authority such as *Sammy Musembi Mbugua* provides compelling reasoning in favour of a more individualised, rehabilitation-oriented remission framework, it places emphasis on rehabilitation while seemingly understating the aspects of deterrence and retribution. In contrast, the Seychelles case law has adopted a more balanced penal philosophy. These precedents affirm that remission is a privilege, not a right, and that differentiation between classes of offenders is constitutionally valid when it serves a legitimate and proportionate legislative aim. As set out above, the Seychelles Court of Appeal held that it does serve such aim. This Court also refers to Article 7 (1) of the Civil Code of Seychelles Act 2020 which provides that judicial decisions are binding on all courts lower in the judicial hierarchy:

*7.(1) A judicial decision is binding on all courts lower in the judicial hierarchy than the court which delivered the precedent decision.*

[44] For all the aforementioned reasons, having considered the submissions on preliminary objections and the merits pertaining to the case, this Court proceeds to dismiss the petition. Each party to bear their own costs.

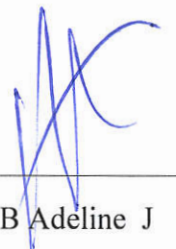
Signed, dated and delivered at Ile du Port on 01 July 2025.



M Burhan J  
(Presiding)



G Dodin J



B Adeline J