

# THE SUPREME COURT OF SEYCHELLES

## PRACTICE DIRECTION NO. 4 OF 2020

1. This Practice Direction is made pursuant to the powers conferred on the Chief Justice by the Constitution of Seychelles and the Criminal Procedure Code.
2. This Practice Direction repeals and replaces Practice Direction 2 of 2017.
3. This Practice Direction has been produced to guide the conduct of criminal cases in the Supreme Court of Seychelles and to reduce delay, case backlog and ensuring that justice is done irrespective of status. Accordingly, this Practice Direction encompasses ‘best practice’ in the governance of criminal trials.

### **The overriding objective**

4. The overriding objective of this Practice Direction is that criminal cases be dealt with justly and expeditiously.
5. Dealing with a criminal case justly and expeditiously includes, so far as is practicable:
  - a. acquitting the innocent and convicting the guilty;
  - b. dealing with the prosecution and the defence fairly;
  - c. recognising the rights of an accused person;
  - d. ensuring that appropriate information is available to the Court when applications for bails are made and sentences are considered;
  - e. allocating to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases;
  - f. enforcing compliance with rules, practice directions and orders; and
  - g. dealing with the case in a way that takes into account:
    - i. the gravity of the offence alleged;
    - ii. the complexity in issues involved;
    - iii. the severity of the consequences faced by the accused, the victims, witnesses and all others affected;
    - iv. the needs of accused persons who are unrepresented, and
    - v. the interests of witnesses and victims.
6. In the conduct of a criminal case, the prosecution must supply or give reasonable access to all parties and the Court of all materials to be relied upon during the trial.
7. As soon as possible after the Complaint is filed and prior to the Pleas and Directions Hearing, the prosecution shall serve on all parties and the Court a paginated and indexed case bundle of statements and exhibits. The index to the bundle shall include the following information:
  - a. the name of the case;
  - b. an itemised list of all witness statements showing the name of each witness; and

- c. an itemised list of all other items (documentary, pictorial, aural, physical etc.) with a short description of each item to be produced and where possible the name of the person producing.

The prosecution may be permitted to file additional evidence with the leave of the Court. Where it chooses to file additional evidence, an updated index to the case bundle shall be provided to the Court and the defence.

8. In the conduct of a criminal case, each party must:
  - a. prepare and conduct the case in accordance with the overriding objective;
  - b. comply with this Practice Direction, and any directions given by the Court; and
  - c. inform the Court and all parties of reasons for any significant failure in taking any procedural step required by this Practice Direction or any Court Direction. A failure is significant if it might hinder the Court in furthering the overriding objective.

### **Pre-Trial Case Management by the Court**

#### ***Pleas and Directions Hearing***

9. In furthering the overriding objectives, the Court shall hold a Pleas and Directions Hearing (PDH) at which the Plea or Pleas of the accused person/persons shall be entered and directions granted to enable the trial to proceed.
10. A PDH shall be adjourned where the Court determines that there is good reason to do so.
11. The purpose of a PDH shall be to facilitate:
  - a. early identification of the real issues in dispute;
  - b. considering in advance issues inter alia regarding the admissibility of any documentary, technical, expert, pre-recorded, digital or electronic evidence including confessions, video, or audio-recorded interviews;
  - c. early identification of the number of witnesses required to testify and any special accommodation required, including the length of those witnesses' testimony, and whether tele-conferencing or live TV link shall be necessary and/or appropriate;
  - d. the determination of directions to be given to enable the issues to be tried;
  - e. the determination of court time to be allocated to the parties for the trial and setting a trial timetable;
  - f. an opportunity for counsel to seek an indication of the maximum sentence that would be passed in the event of a guilty plea.
12. Prior to the PDH, parties will complete a Pleas and Directions Form ("Form CR1") (approved by the Chief Justice from time to time) and submit it to the Court at the beginning of the hearing. At the conclusion of the PDH the allocated Judge will give directions to facilitate the hearing of the issues.

13. The date and time for the hearing of the trial will be set during the PDH. Trials, other than in exceptional circumstance, should be held on consecutive days until conclusion. Once a trial has been listed for hearing, the hearing date will not be altered except on application to the Chief Justice who may deal with the application on paper or may direct a hearing before him/her.

#### ***Pre-Trial Review***

14. There shall be a Pre-Trial Review approximately six weeks prior to the fixed trial date. The parties and their Counsel are to attend the Pre-Trial Review. At the Pre-Trial Review the parties will confirm to the allocated Judge whether all directions have been complied with and whether the trial can proceed. If all directions have not been complied with the allocated Judge may make other suitable orders but the Judge will not adjourn the trial or take the case out of the list without the consent of the Chief Justice. A Court may give a direction on its own motion or on application by a party.

15. Prior to the Pre-Trial Review, parties will complete a Pre-Trial Review Form (“Form CR2”) (approved by the Chief Justice from time to time) and submit it to the Court at the beginning of the hearing. At the conclusion of the Pre-Trial Review the allocated Judge will give directions to facilitate the hearing of the issues.

16. At the Pre-Trial Review the Judge may:

- a. order that the trial or part thereof will be heard in open court or in camera;
- b. fix, postpone, bring forward, extend, cancel or adjourn a hearing other than a trial;
- c. shorten or extend a time limit fixed by a previous direction;
- d. set the trial timetable and require that issues in the case should be:
  - i. identified in writing prior to the trial and/or
  - ii. decided in a particular order.

#### **Applications to vary a direction**

17. The parties may not agree to vary the directions without the consent or approval of the allocated Judge. An application for variation of any direction or order must be brought at the earliest possible instance with notice to the other party.

18. A party may apply for variation of a direction if:

- a. the direction was given in the party’s absence; or
- b. circumstances have changed.

#### **Trial and judgment**

19. At the trial the parties may expect the allocated Judge to actively manage the case so that the trial is completed within the time allowed for the parties within the timetable agreed at the Pre-Trial Review.

20. Prior to the beginning of the trial, the prosecution will file with the Court and serve on the defence an Opening Note setting out the evidence to be produced to prove the charges against the accused person(s).
21. Counsel will be expected to submit closing submissions on the issues of law and fact immediately following the completion of the hearing of evidence. With the consent of the allocated Judge, Counsel may elect to file submissions in writing by email to [registrar@judiciary.gov.sc](mailto:registrar@judiciary.gov.sc) not later than one month after the completion of the hearing.
22. At the completion of the trial the Judge will determine a date for the delivery of judgment within 60 days of the completion of the hearing which will not be delayed by the late filing of submissions.

### **Responsibility of Counsel**

23. Each party shall—
  - a. take every reasonable step to ensure attendance of witnesses;
  - b. promptly inform the Court and the other parties of anything that may—
    - i. affect the date or duration of the trial or appeal, or
    - ii. significantly affect the progress of the case in any other way.

### **Review of compliance with these directions**

24. Failure by Counsel to attend at any required hearing or comply with any direction without valid excuse may result in sanction by the Court, including disciplinary action in accordance with the law. The Court shall refuse to grant any unjustified adjournments.

### **General**

25. All pleadings under the CPC must be filed at the Criminal Registry of the Court. All other required documents may be submitted to the Court and other parties by email to [registrar@judiciary.gov.sc](mailto:registrar@judiciary.gov.sc) or in hardcopy. Email delivery reports are sufficient to show adequate service on other parties.
26. Forms CR1 and CR2 (attached) are approved by the Chief Justice for the purpose of this Practice Direction.
27. This Practice Direction takes effect from the 15<sup>th</sup> day of June 2020 and will apply to all criminal cases filed on or after that day.

Dated at Ile du Port this 10<sup>th</sup> day of **June 2020**



Mathilda Twomey  
Chief Justice