



CHIEF JUSTICE'S CHAMBERS SUPREME COURT OF SEYCHELLES

Speech - Opening of the Court 2016 Access to Justice for All

President of the Court of Appeal, Attorney General, Justices of Appeal, Judges of the Supreme Court, Master, Magistrates, Registrar, Secretary of State, Dean of the Diplomatic Corps, Ambassadors, learned Counsel, valued staff members of the Judiciary, distinguished guests, good morning.

Access to justice for all

It is an honour and privilege for me to address you today as the Chief Justice of the Supreme Court. Our theme for this year's ceremonial opening is "Access to Justice for All". This is primarily a call to action for the Judiciary but it is also an appeal to everyone in Seychelles. It is our function and role in Seychellois society – to ensure that the legal system provides fair and equal treatment to all persons who access it. It is about making sure that all persons are able to obtain a just and timely remedy for a violation of their rights. Access to justice is the constitutional right of every citizen and access to justice applies equally to constitutional, criminal and civil law matters. Access to justice is the ability to gain admission to fora in which matters of rights and law are adjudicated fairly and at the end of which there are fair outcomes.

Justice should be the same, in substance and availability to all persons who enter our courtrooms and tribunals, regardless of their economic status. They should enjoy an adequate level of professional legal assistance. They should have confidence in a completely impartial judicial decision making process regardless of their political persuasion. As the distinguished US Judge and judicial philosopher, Billings Learned Hand said: "It is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect.... If we are able to keep our democracy, there must be one commandment: thou shalt not ration justice."

Since I have been appointed I have been at pains to impress on the gatekeepers of the judicial process the impact of their work on citizens who access our justice system. I have

been particularly concerned with the treatment of those individuals who are unable to understand either the court language (English) or the judicial process or those who are badly represented by lawyers who fail to properly vindicate and advocate their rights. Mediocrity, laziness, avarice and complacency are the enemies of access to justice. Let me appeal to you all - Let it be the interests of the individual citizen and the nation that directs policy on access to justice, not the providers of the service who determine policy on access to justice.

In the past years the legal profession has been criticized for not providing justice for all – criticism ranged from excessive delays in resolving cases, political and other organised influence, disparate treatment of similar cases, judicial and legal professional misconduct, and difficulty in obtaining professional and ethical legal assistance. Some of this criticism has been entirely unfounded, however, some has been near the mark. We have been working tirelessly on reducing our backlog over the past years, and although we slipped a little during 2015 due to high priority cases, I am confident that we can reduce this right down in the years to come. I believe that justice delayed is justice denied. I wish to specifically congratulate the Magistrates Courts and the Criminal Division of the Supreme Court on reducing their backlog significantly and on having cleared all cases prior to 2007. I also wish to congratulate the Commercial Court for keeping to its schedule when dealing with cases. We will continue to focus on achieving timely justice in 2016.

Furthermore, whilst I am confident in the skills and knowledge of each and every judge, magistrate and member of the tribunals and of the legal profession, I believe we need to focus on updating our procedures and refreshing our skills to ensure that the most up-to-date laws are applied uniformly across the judiciary. In this regard I note with dismay that Seychelles still does not have a recent set of the official laws of Seychelles. I congratulate SeyLII on its efforts to consolidate the laws in the e-Grey Book. However, it is unacceptable that the legal profession and the judiciary must go on a wild goose chase to access the most recent laws. Moreover, there is no single publisher who takes responsibility for compiling and consolidating the Seychelles Law Reports. We are thankful for Professor Angelo's long service in providing the finding list and the law reports, however we need to look at local solutions to ensure that the most relevant laws are published and easily available to all.

Recently, I have heard allegations of political or personal influence in the judiciary. I, however have confidence that each and every judicial decision-maker weighs the law from a neutral and unbiased point of view. However, we need to appreciate these criticisms and ensure that we do not become complacent in guarding against any political influence on our work. Given the present climate and this important time in our fledgling democracy, I will touch on this issue again at the end of my address.

Without proper legislation providing citizens with access to the information held about them by the government, (what is commonly known as an Access to Information Act), it is difficult for citizens to bring a case where a government agency holds the information and refuses to release it. The right to access information is a fundamental right contained in the Constitution, and so the absence of such legislation is an oversight which inhibits the access to justice of our citizens. Judicial review cases are on many occasions pitted against the individual who challenges the decision maker in terms of accessing the information used for the decision. It is not unusual for the judiciary to be stonewalled or delivered minimal information when requesting files from government departments and agencies in order to discharge its duty in petitions to assess the reasonableness, legality and proportionality of administrative decisions. This is unacceptable.

Our Legal Aid Act is out of date, and very few lawyers are willing to take Legal Aid cases, which has resulted in our poorest citizens being prevented from bringing their cases to court. I applaud the few lawyers who carry the majority of the Legal Aid cases. You are very much the unsung heroes of our legal system. Going forward all legal practitioners will be required to take Legal Aid cases as a requirement of their Legal Practitioners' licence and I hope that you embrace this opportunity to give back to the community your pro bono skills.

2015 in review

Here are my thoughts and appreciation of the context in which we have worked as the judiciary towards the goal of providing access to justice for all.

In August last year I stepped into a new pair of shoes, back in my home country serving my people after nearly 20 years living across the ocean. These are the shoes of some preeminent predecessors and I was equally daunted and honoured by the appointment.

2015 was a year of change and there were several key achievements which I wish to take a moment to appreciate.

The scope of the judiciary grew when **the Family Tribunal and Employment Tribunal** were officially transferred into the administration of the Judiciary, and we look forward to the completion of the merger with the putting in place of Acts to ensure the Tribunal's independence from the formerly responsible Ministries. The tribunals will continue to work closely with the Ministries; however this move will allow us to establish more procedure in the Tribunals and more uniformity in the hearing of cases. In the next year the Tribunals will be added to CCASS, our case management system, allowing more streamlined processing of cases and more oversight of the cases. In time we are looking to move the Tribunals physically closer to the Palais de Justice so that we can make greater use of our resources. I wish to formally welcome everyone involved with the Tribunals to the

judiciary and thank you for your professionalism in this process of transferring the tribunals to the judiciary.

In 2015 we saw the appointment of **Judge Govinden** as a judge of the Supreme Court. The impact of her appointment has been felt throughout the judiciary and I am grateful for her enthusiasm and commitment to her role. In April the office of the Chief Justice was joined by **Ms. Joelle Barnes** as the Executive Legal Assistant to the Chief Justice, a position which had been vacant for some time. Her appointment has increased the efficiency and quality of the work of the Chief Justice's Chambers. In May, **Mr. Eric Savy** was appointed to the position of Director of Human Resources and Administration, which has delivered hugely in terms of administration, recruitment and training of personnel. In October, we were joined by **Ms. Ellen Carroll** in the position of Master of the Supreme Court. Her attention to detail and exactitude in procedural law is already raising the standard in both pleadings and practice which was sorely in decline. **Mr. George Robert** was appointed as a Magistrate and his commitment, hard work and professionalism are showing results in terms of expediting cases and in the delivery of quality decisions. During the year, **Magistrate Brassel Adeline** was promoted to the role of Senior Magistrate, and I congratulate him on this. Sadly, during the year **Judge De Silva** became unwell and regrettably resigned due to his ill-health. We wish him all of the best with his recovery and thank him for his two years of service to the judiciary. And I also thank my colleagues who stepped up to assist me in dealing with the cases he was judging.

As far as facilities go, the **Supreme Court Annex** was opened with the generous support of the UNODC. This building has the particular mandate to hear piracy matters and adds two more fully functional court rooms as well as an impressive conference room facility to the Palais de Justice Compound. The facilities presently being used by our lower courts provide barely sufficient working conditions. It is unfortunate that the plans for the new **Magistrates' Building** have had to be placed on the backburner again, but we are confident that we will be able to come to some agreement about the required facilities to accommodate the Magistrates and the Tribunals. We look to the Ministry for Legal Affairs to secure the much needed funds for next year.

A dedicated **Fast Track Court** was established this year to handle the prosecution of road traffic cases and environmental offences. The establishment of the Court combined with the reduction of fixed penalty fines issued has resulted in an explosion of cases being brought to this court, with 1752 cases filed compared to just 122 in the previous year. This has placed a tremendous strain on the magistrate's courts which were functioning without the core number of staff for most of the year. We will need to look at the feasibility and purpose of the Court in view of the massive increase of cases.

The long awaited **Habeus Corpus Rules** were gazetted providing certainty of procedure in that very important aspect of laws related to detention. 2015 saw the first celebration

of Constitutional Day and I wish to congratulate the President of the Court of Appeal on chairing a committee which put together several excellent events to celebrate the constitution and Seychelles' unique constitutional drafting process.

We also saw greater cooperation with the University of Seychelles with the signing of memoranda of understanding between the University and the Judiciary. Part of this relates to the running of the Bar Course to train future lawyers in the details of Seychellois law. I am thrilled to hear that the Course has had a good enrolment and that the first term of the course's teaching has been successful. UniSey also held the first ever Moot Court Competition in the Palais de Justice in early December, which was presided by a member of the Young Lawyers Association and the Master of the Supreme Court. I am delighted at these steps which are breathing life into Seychellois legal education.

During 2015 some 1073 cases were filed in the Civil Division of the Supreme Court, and 1028 cases were closed in the year. In the Criminal Division a lower number of 148 cases were filed, and 156 cases were completed. In the Magistrates' Court, the Civil Division saw 383 cases filed and 307 closed. As I mentioned earlier, the Magistrates criminal division saw a massive increase in the number of cases filed, nearly 200% more than in previous years with 3089 cases filed during the year. Admirably the magistrates' court managed to dispose of 1759 cases during the year.

Most notably there was an increase in the number of traffic offences prosecuted with the introduction of the Fast Track Court. We also saw an increase in the number of other criminal matters which were filed in the Magistrates Court, with 928 non-traffic related criminal offences filed in 2015, a 35% increase on the previous year (which had only 678 cases filed during the year 2014). Similarly the number of juvenile offences filed increased by 65% from 20 cases in 2014 to 33 in 2015. This has understandably had an impact on the Magistrates Court, which impact we will feel during 2016. I wish to thank the Magistrates for their continued efforts in disposing of matters without bemoaning the increased pressure being placed on them, and the dire physical conditions under which they are working.

Strategic Plan 2016

One of my first decisions as Chief Justice was to defer the Ceremonial Opening of the Supreme Court to the beginning of this year. This departure from tradition has allowed me to get to grips with the judiciary, its management and the work that is done at all levels. I have had an opportunity to take stock of the situation in the judiciary and am excited about the work that we have to do.

When Justice Egonda-Ntende was at the helm of the Judiciary, he undertook to institute a 5 year Strategic Plan which ran from 2010 to 2014, and was reviewed in August 2014.

One of the main goals of the **2010 Strategic Plan** was to redefine the accountability of the judiciary to the public and to increase the efficiency of the judiciary. The strategic plan was ambitious, and great progress was made in many areas. However, there is still a significant amount of work to do.

The strategic imperatives of the 2010 plan were:

- Streamlining court processes;
- Innovating Case Management Systems;
- Revamping the Legal Aid Scheme;
- Bettering Employee relations;
- Repositioning the public image;
- Upgrading basic infrastructure;
- Engaging with local partners; and
- Securing greater financial autonomy.

With commitment and drive the Former Chief Justice saw a tremendous amount of progress towards achieving these plans. However, no single imperative was 100% completed in the five years, moreover, some of the areas were vastly improved under the former CJ have regressed since. We will redouble our efforts and build on the progress already achieved.

In the next three months we will engage in the development of a further **strategic plan to take us from 2016 to 2020**.

Below are some of the areas on which I wish to focus.

I want to see a judiciary that is **independent, transparent, efficient and dignified**. I want to work in a place where people are proud of the quality of the work that they do, and a place that promotes the ability of individuals to access timely justice. A primary focus for me is to improve the speed with which we complete cases – I think that it is completely unreasonable for cases to run over many years, until the parties have passed away and their heirs are left trying to claim justice for injuries caused years before.

Policies – we need to establish and institute policies which are applied uniformly across the judiciary – the Tribunals, Magistrates Courts, Supreme Court and Court of Appeal. And not only do these policies need to be written and implemented, but they also have to be adopted and followed. I notice that although there are delay-reducing measures and internal protocols for judgments, these are not implemented across the board. I am particularly disappointed with some civil matters filed more than a decade ago which have not yet been completed. Let this be the last year that I have to mention this matter. The Protocol issued to the Judiciary will be strictly enforced- constitutional cases are to be completed within six months of their filing, criminal cases one year and civil cases two

years. Until they are 100% applied, the protocols and policies cannot be successful. We will focus on implementing new policies where they are required, and better encouraging adherence where existing protocols are not being applied.

Personnel – When I engaged with the heads of each department last year, almost all said that they needed more personnel in their departments. We will be looking to increase the number of permanent staff, specifically with two new judges and two new magistrates. We will need to appoint new members to the Tribunals and I hope to pay some attention to improving the Tribunals’ capacities. But as a strategic solution we also need to measure and improve our efficiency and effectiveness as a team.

We need to encourage personnel to stay in their posts, and we can only do this through well designed incentive packages and planned human resource management. I would also like to encourage more Seychellois-resident staff to join the judiciary, especially in judicial positions so that we have fewer continuity problems when expatriate staff leave. We need to improve the conditions, training and incentives available to all staff, so that we can nurture and raise them up into positions and encourage them to stay within their posts.

I also will look at whether we are using our existing personnel in the most efficient ways, and whether we can make better use of our existing personnel. I may shuffle staff around, and innovate ways of working. Please bear with me as we try to find the most efficient way of doing things. For too long the judiciary has hidden its head in the sand while the backlog built up because “this is the way things are done”.

I want to ensure that all staff are aware that they are essential to the administration of justice and to increase their awareness of the valuable input that they have to how justice is administered; from the caretakers of our facilities, to the court orderlies, the security staff to the judges.

Professionalism –I believe that the legal profession requires a facelift. I have been personally dealing with each professional conduct complaint brought against any members of the judiciary and the legal profession, and although many are frivolous, some are cause for significant concern. We have a new crop of young lawyers who are graduating from UniSey and the Bar course and joining the Bar. Many will hopefully go on to become magistrates and judges, and respected members of the legal community. I want to create an environment in which they are trained in the highest levels of professionalism and ethics, and can be international ambassadors of the Seychellois legal system. I seek your support in creating an ethical and professional environment for their training – living up to the highest standard in your conduct, legal research, and even attire. We have codes of conduct for the lawyers and the judicial staff which provide a

baseline against which we can judge ourselves, but I hope that you will seek to exceed those standards.

One particular area which requires serious attention is with regard to having pre-agreed fee schedules with your clients which stipulate the legal fees that you will exact for each stage of a litigious process. I urge you to encourage your clients to settle out of court and to take mediation seriously, and to willingly refund clients the surplus legal fees that they have paid you where they withdraw their instructions early, or where you are unable to progress their case diligently. I know that the legal profession has been completely overworked for too long. With the new lawyers coming through I urge you to consider becoming approved chambers and taking pupils to assist you and to be trained up.

I hope to improve the professionalism in the judiciary support staff too.

A very important factor is going to be training and education. I hope to revive and revamp the **Judicial College** to ensure that we are able to provide the judiciary with high quality legal education, and also to work more closely with UniSey and the Bar to provide ongoing legal education for legal practitioners. We have successfully run management and university courses for our support staff and I hope to evaluate the success of these schemes and whether this has assisted our staff in improving their confidence and skillset within their jobs.

Court processes need to create an environment to **support the judicial officers** in fulfilling their roles. Processes which slow down the tribunals or court rooms need to be jettisoned and replaced with processes which foster efficiency. I look forward to reviewing the Civil Procedure Code, the Courts Act, the rules of Court and implementing procedure in the tribunals. One very important aspect of this is the introduction of recording equipment in the Magistrates' Court, Family Tribunal, and Employment Tribunal. We need to be more strategic about how we use court time so that proceedings are streamlined. I have asked all judicial officers to take a hard line on non-appearance and delay tactics of counsel. If the legal professionals involved and the judicial officers take the carriage of the case seriously, matters can run more smoothly and more efficiently. We will continue to take this approach and expect that counsel will cooperate to ensure that they are able to cope with their own case load and not take additional cases where they do not have the capacity.

We need to improve stakeholder cooperation – this means that I am looking to foster our relationships with all stakeholders – the Bar Association, particularly, but also the Attorney General's Chambers, the prison authorities, the social affairs department and department of labour. These are but a few of the key stakeholders who make the judiciary able to function. I am looking forward to greater cooperation with UniSey, and other external stakeholders too.

Finally, I must return to the theme we have chosen for this ceremonial opening, that is Access to Justice for All. In my introductory remarks I stated what Access to Justice is. I conclude by reminding you what it is not. Jacques Lacan stated that “Every truth has the structure of fiction”. We create stories to make sense of our trials and tribulations, our successes and our disappointments. But truth is not fiction and our courts are taxed purely with fact-finding. Trial by media, especially social media has no such constraint on its opinion forming. I have been a proponent of giving the public access to the judiciary, especially via email and social media, with the sole purpose of raising public awareness of due process. Sadly, I have noted that some individuals, including lawyer-politicians do not extend their professionalism into these communication channels. Where one maintains a personal presence in such communication channels one is professionally bound to refrain from inciting in one way or another the retelling of untruths about the about judicial process, the sowing of hatred against individuals, and the fostering of disrespect and abuse of fellow professionals, especially when correct legal outcomes differ from personal desire in individual cases. And with this presence one is further charged with correcting and educating fellow keyboard warrior followers who are engaged in misinforming the public on the workings of justice. Those of you who maintain such a presence in media and do not speak out against such actions aid and abet the obstruction to the rule of law and access to justice. Those media houses who also engage in speculation, deliberate misinformation and the undermining of the justice system should also take lessons in professionalism and even perhaps journalism.

I, personally have been the subject of political diatribe, violent threats and personal abuse. I also have been the subject of subtle hints – phone calls, text messages, postings with the same sub text- “ We know you are a fair minded individual and you will do the right thing and the right thing is to do our bidding or else...” Your comments are contemptible and my office is above your threats and insinuations. It is a cowardly act to make such attacks knowing full well that the object of such attacks is unable to comment on them.

The role of justice is to prevent conflict. We are a micro country; we live cheek by jowl with each other. Promoting tolerance and respect especially in a polarised society should be your ultimate goals. The Judiciary will not be swayed, hijacked, threatened or disrespected by anyone - not by politicians in government, not by those in opposition, not by power lobbies and not by organisations or associations religious, social or otherwise. Not on my watch and not ever. The Judiciary does not engage in politics. Know that it is guided by the rule of law and nothing else.

Anfen, mon ti a kontan retourn lo tenm ki noun'n swazir pour seremoni louvertir Lakour. Sa se: 'Lakse a Lazistis pour tou dimoun". Parfwa nou annan tandans envant ketsoz pou esey fer sans leprev ek difikilite ki nou pas ladan, demenm ki nou sikse ek dezapwentman.

Me nou pa kapab envant laverite. Rol nou Lakour se inikman pou etabli bann fe. Zizman par medya – sirtou par medya sosyal – i al kont sa prensip etabli bann fe, etabli laverite. Mon'n toultan an faver donn piblik pli gran akse posib avek Zidisyer, espesyalman atraver mwayen kominikasyon elektronik, avek bi pou sansibiliz nou dimoun ankore plis lo prosedir legal e lafason ki lazistis i ganny delivre. Me mon note ki serten endividi – parmi zot, serten avoka ki anmenmtan politisyen – pa pe respekte zot devwar e responsabilite profesyonnel dan zot itilizasyon sa bann laform kominikasyon. Antan ki en profesyonnel ki pratik lalwa, ler ou annan en presans lo sa bann platform kominikasyon – medya sosyal – ou annan en devwar ek lobligasyon profesyonnel pou ou pa propaz mansonz kont delivrans ek ladministrasyon lazistis. Ou devre osi pa mank respe e pa abiz ou bann koleg, sirtou kot bann desizyon legal ki korek i kont sa ki ou ti swete dan serten ka partikilye.

Anplis ki sa, ou annan en devwar ek lobligasyon pou koriz e edik leres ou koleg ki pe mal servi medya sosyal pou propaz fo lenformasyon lo fonksyonman lazistis. Zot ki aktif dan medya e ki pa pe denons sa bann aksyon negatif, zot pe ede e zot pe ankouraz blokaz letadedrwa e lakse a lazistis. Pareyman, bann piblikater ek redakter zournal ki pe pas zot letan dan spekilasyon, dan en kanpanya dezenformasyon e sabotaz sistenm lazistis, zot devre pran serten lesou dan profesyonnalizm e menm dan zournalizm.

Mon rapel zot tou: “case” pa pas ni lo Facebook, ni dan zournal, ni dan laplenn e ni anser. Case i pas ankore e zis ankore.

Resaman, mon'n eksperyans en kantite labi personel. Mon enparsyalite i'n ganny met an dout. Mon'n menm resevwar menas fizik. Mon'n osi resevwar serten sizesyon sibtil – par telefonn, SMS e post – avek menm mesaz: “Nou konnen ki ou, ou en dimoun onnet e zis e ki ou pou fer sa ki ou devret fer, sinon ...”

Tousala pa fatig mwan. Zot komanter i plis ki meprizab e mon kondann zot an term pli kategorik posib. Mon pa appartenir a okenn parti politik. Mon napa okenn afilyasyon politik. Mon rol koman Sef Ziz se asire ki lazistis dan nou pei i ganny administre e delivre avek enparsyalite e efikasite, san lafreyer, san faver e san malis. E sa ki mon pou kontinyen fer. Demenm, Lofis Sef Ziz i parlao tou menas e ensinyasyon. I en laksyon las e kapon pou fer bann latak parey tou an konesan ki lobze zot latak – setadir mwan personelman ek mon bann koleg ziz e mazistra – pa kapab reponn zot.

Enn bann rol lazistis se pou anpes konfli. Nou en pti pei; nou reste kotakot. Promosyon tolerans ek respe – sitou dan en sosyete polarize – ti devret zot lobzektif final. Zidisyer pa pou ganny enfliance, “hijack”, menase, sibtil mank respe par person – pa par politisyen dan gouvènmman, pa par lopozisyon, pa par okenn lobi, pa par okenn lorganizasyon relizye, sosyal e nenport lekel ankore. Zanmen, zanmen tan ki mon Sef Ziz mon pou permet sa arive. Zidisyer i andeor politik. I andeor gouvènmman. I andeor legliz.

I andeor tou lorganizasyon ek group lobi. Zidisyer i ganny gide e fonksyonn inikman selon prensip letadedrwa, e nanryen dot.

I praise and thank those leaders and responsible citizens who have had the courage to remind our countrymen that the courts of Seychelles and judicial officers are to be respected. I encourage you in the important work of educating the citizens of this country as to what the rule of law really means in a democracy.

These are just some of my thoughts on the next stages in our judicial development. I look forward to your support for the success of the judiciary. I thank you all for your attention and your involvement in having made 2015 a success. We have much work to do, but I believe that we have a good, committed team and I welcome you along for the ride.

Thank you.