



## **CHIEF JUSTICE R.GOVINDEN'S SPEECH FOR THE OCCASION OF THE RE-OPENING OF THE SUPREME COURT, 2021**

### ***FOR PEACE, CULTIVATE JUSTICE***

President of the Court of Appeal, Mr Anthony Ferando; Justice of Appeal, Mrs Fiona Robinson; Bishops Alan Harel of the Catholic Church; Bishop James Wong of the Anglican church; fellow Judges of the Supreme Court; Master of the Supreme Court; Magistrates; the Registrar; Learned Counsels present and representatives of the different faiths.

Judicial officers; members of staff of the Judiciary, legal practitioners and the people of Seychelles who are following us on social media and on television.

Ladies and gentlemen,

Good morning

Today we mark the occasion of the opening of the Supreme Court for the year 2021. We are having a soft opening and all the other usual ceremonial events are not taking place as a result of our compliance to the conditions imposed by the health authorities. The event is being broadcasted live via the internet. It is the first time in living memory that our court is being opened without the different formal ceremonies. However, extraordinary times calls for extraordinary measures.

### **Republican values**

The Judiciary of Seychelles is the third arm of the state. However, though it is an integral part of the Republic and indeed playing an essential role therein, it has over the years not been forthcoming in accommodating the

presence of the symbols of the Republic on its premises or during its activities and ceremonies. Contrary to the Executive and the Legislature, which proudly displays the National Flag inside its official premises and which plays the national anthem during important events, the Judiciary has, over the years, relegated itself only to displaying the seal of the Republic of Seychelles in its courtrooms and tribunals. Perhaps it was a result of an oversight or maybe it was done deliberately in an attempt to keep and maintain our appearance of impartiality and independence. After much reflection, I have come to the conclusion that the presence of symbols of the Republic cannot infringe our independence. To the contrary, it reinforces our independence as they show that we abide to and cherish the values that they enshrine as revealed by our Constitution. It is for this reason that I have taken the decision that henceforth our eloquent national anthem will be played at the ceremony of the reopening of the Supreme Court. I have also taken steps to having our national flag displayed in all of our courtrooms and tribunal starting with court number 1. To me it is not a mere object of decoration but is also a symbol of values that we all aspire to. In our courtrooms, it proudly signifies that though we are separate and independent from the other arms of government we are also equal and form one in our conformity to the ideals of constitutionalism. It will also act as a constant reminder to court users and ourselves that every decisions that we take is on behalf of the Republic and people of Seychelles, and not on our own behalf.

### **For peace, cultivate justice**

Someone may have noticed that our theme for this year is similar to the motto enshrined in the foundations of the ILO's original building in Geneva, "*Si vis pacem, cole justitiam*" – "*If you desire peace, cultivate justice.*" Established in 1919 as part of the Treaty of Versailles, the ILO's Constitution begins with the affirmation, "*that universal and lasting peace can be established only if it is based upon social justice*". It is in this spirit

that we approach our theme for this year. However, we have expanded it further. Our cry is that peace, which is a concept of societal friendship and harmony and the absence of hostility and violence, can only be founded on justice in its holistic sense as enshrined in our Constitution.

Why do we need peace, one may ask. To many the answer to this question should be self-evident, as humanity achieve its fullest potential in a state of peace. We at the Judiciary feel that peace is not self-perpetuated but created, and we need it now more than ever before. Firstly, because we are still going through a political transition. It is only a couple of months ago that we had a change of government. This peaceful change that we all take for granted can easily turn into conflict if we are to lack wisdom and understanding.

Secondly, there is the ongoing process to find the truth, which will lead to reconciliation, and national unity, which is led by the Truth, Reconciliation, and National Unity Commission leading another transition process, and so far, this has been peaceful.

We thirdly need peace as we are going through a tough social and economic time that can easily lead to civil discontentment, if its consequences are not properly managed. Harmony is essential to economic growth and it is the catalyst of all progress and development in any country.

Finally, we need peace amongst us brother and sister judges, for if we are not at peace between ourselves, how can we do justice?

We are of the view that for peace to exist we need to cultivate justice. How do we cultivate justice one may ask?

To me the answer is simple. We do so primarily by the three arms of the state complying with all the provisions of our Supreme law. By us abiding to all the democratic principles found in it, including the Rule of Law; the balance of powers; the protection of fundamental rights and freedoms, which encompasses embracing socio economic justice, and upholding

supremacy of the Constitution. In other words, by accepting the notion that constitutionalism is the catalyst for peace and stability. Something which should forever be our mantra, to be repeated over and over until there is a total unreserved obedience to it.

In this regards, we are comforted by the fact that the two other arms of the state have resorted to judicial recourse in order to settle controversies between themselves and have accepted to abide to our decisions. This is a sign that the idea of supremacy of the Constitution is alive and healthy in this country. Under my leadership, the Judiciary we will continue to play its crucial role, independently and impartially as the guardian of the Constitution.

I emphasize that the Rule of law is what keeps everything together in a democracy. It consist of a deep seated and sincere belief by all that the law reflects the will of the people and whatever action that we take we have to do it in accordance and subject to law. I do not see any areas of conduct that is currently not regulated positively or negatively by a law. Even when the law allows one to act on one's discretion, the law sets parameters to those exercises of discretions. As the guardian of the Constitution the Judiciary will continue to ensure that everyone acts in accordance to law.

This said we should also not lose count of the fact that as a product of the Constitution, its provisions also obligate us judges. We are duty bound to uphold our oaths of office and we have an obligation to act with integrity. Corruptive practices should not exist in our mist or be tolerated by us, if there is any founded complaint of corruption I will without hesitation institute the disciplinary process irrespective of whether he or she is one of our own.

I am conscious of the need for us to eradicate corruption in this country and it is the judiciary's undertaking that we would deal with all such cases effectively and in accordance to law irrespective of the status of the accused person and whether he or she is a member of the Executive or the Legislature.

We also need to be aware that above else we should seek to cultivate justice that leads to peace by first asserting judicial independence amongst ourselves and work free from outside interference. A judge should be firm and bold in his or her judicial opinion even if this is to displease any persons, including his/her peers. We should be able to do this whilst at the same time embracing the principle of collegiality, which is the idea of promoting good relationship in the process of judicial determination between colleagues.

We should cultivate justice by ensuring that substantial justice is the guiding beacon in our decisions and in our quest to remove the backlog of cases, lest we are to turn the judicial process into a mere mechanical process.

We should cultivate justice by maintaining and safeguarding the integrity and dignity of our courts and having done so walking proud knowing well that we are the last barrier between justice and tyranny. If we do this, our examples would inspire and give confidence to the public, which we serve.

As for the citizens of Seychelles, we should not take our peace for granted. We have a duty to ensure its continued presence by cultivating the spirit of justice. We should tender this notion by giving to it the care and attention it deserves. We are all responsible for its growth by promoting and upholding constitutional values, because if it withers away it will be to our demise. It is my sincere hope that this year will prove to be one in which there will be a combined national effort to help the Judiciary in this noble task.

The citizens of this country also needs to know the role of each arm of government and how it interacts with each other. We need to educate them in that regard. As far as we are concerned they need to know that the Judiciary is there to administer the law according to the Constitution and that there is a way that the law says we do this administration. The law says that we have to wait for a person to bring a case before us and having

done so, that we have an obligation to hear both sides of the story with impartiality and then give a decision based on evidence. It is not our role to give legal opinions to the press or members of the public on any matters that happens outside our courts, as sensational or as interested as they are. If we were to give our opinions on extra judicial matters, we would be abdicating our constitutional functions by entering into the political fray - starting trials by media and forfeiting our constitutional independence. The Attorney General and Legal Practitioners are better placed to give such opinions. We invite the media and our fellow citizens to respect this sacred principle.

The Judiciary is an independent arm of the state, there is a constitutional principle that says that there should be no interference in the internal affairs of the Judiciary. Yet our budget is managed and apportioned by the state. We are aware and we understand the need for fiscal discipline by everybody during this dire time. However, we demand that the government be more engaging with us when it comes to imposition of budget restrictions, given the constitutional implications that they imposed so that we can, in a spirit of understanding, chart a way forward.

## **Vision 2025**

This year we continue to grow on our strategic pillars which consist of streamlining court processes, innovating case administration solutions, revamping the legal aid scheme, encouraging better employee relationship, repositioning our public image, upgrading public infrastructure, engaging local partners, and securing greater financial autonomy.

In the course of last year, the Judiciary began the process of reviewing its progress made under Vision 2020. The purpose of this review process was to reflect on the Pillars and objectives in Vision 2020 and to identify the Judiciary's successes, and areas where the Judiciary perhaps did not achieve as much as it would have liked to and to understand why and come

out with a Vision 2025. This new strategic plan will be made available early this year; it will consist of new strategic goals and objectives. We are doing this with the understanding that the Judiciary is committed to sustaining the progress made under our last vision. A strategic plan is not a one-off exercise, and the goals of Vision 2020 remain relevant, and will continue to form part of the Judiciary's vision and mission going forward.

Regarding our infrastructure, the building of the new Magistrates' Courthouse on Ile du Port was completed in 2020, with the financial support of the Indian Government, of which we are grateful. This relocation of the Magistrate's Courts to Ile Du Port means that all Courts and Tribunals now operate from a single point, allowing for shared resources, improved intra-court communication, and allowing lawyers to move between courts more easily. Some needed renovations have been made to the courthouse in Anse Royale, the work is still undergoing. Ideally, this court needs to be moved to a new location. Efforts have been made to improve the façade of the Palais de Justice which has suffered wear-and-tear and a pigeon infestation. Works inside the Palais de Justice include rewiring of the electrical system and preventative measures against termite and fungus infestation in line with Health Ministry recommendations have been undertaken. In the beginning of this year under a Memorandum of Understanding we intend to effect a renovation of the exterior wall of the Palais de Justice.

## **Statistics**

In terms of court processes, we have been hard at work. A total of 3170 cases have been filed before the Supreme and Magistrates Court last year. We completed 3183 cases, as we continue to decrease the backlogged cases. There are still 2174 cases pending before the Supreme and Magistrates Court – both criminal and civil cases. The Employment Tribunal saw 223 cases brought forward since 2019, of which 184 were completed last year. In total 73 new cases were filed in 2020. This leaves us with 112 cases still pending.

The Office of the Chief Justice continues to actively monitor the case management and the reduction of the court case backlog, which has seen a year on year reduction. During 2018 and 2019 court recording systems have been introduced into all of the Magistrates' Courts and Tribunals enabling better and quicker resolution of matters with the elimination of the need for a hand written record. Furthermore, the case administration system, CCASS has been implemented in the Family Tribunal and Employment Tribunal enabling more transparency about pending cases and more efficiency in managing the cases.

## **Intake and exit**

Last year we bid farewell to the former Chief Justice. On behalf of the Judiciary, I thank her for all our achievements under her leadership.

We also had to say goodbye to our Financial Controller who had been with us since November 2013. We have since welcome a new officer in this role, who joined us in November last.

Four staff from our Legal and managerial departments also left late last year, this included our Director of Legal Affairs, and the Senior Legal Researcher and two other legal researchers. We are presently actively



involved in the process of finding their replacements and it is expected their positions will be filled shortly.

We also grew our team in other areas of need – we recruited our Public Relations Officer to help improve our visibility and to educate and publicise our activities which has resulted in remarkable progress in this area. I will urge members of the press to continue to be proactive in seeking to cover our decisions, especially those with public interest significance. Our court is a public place, the public may, however, not have time to come and hear our decisions. You are therefore the ones that bring our determinations to their smart phones and televisions. For this, we are grateful.

## **COVID 19**

The covid-19 pandemic has also affected us greatly, which due to movement restrictions saw the operations of the Court reduced for a period of 3 months last year and at the start of this year. The ceremonial opening of the Supreme Court which was fixed for the 11<sup>th</sup> of January had to be postponed. Its economic impacts have also affected the Judiciary, which, like many other government departments will experience severe budget cuts.

In March 2020 we were identified as a high-risk zone given the number of people visiting our courts each day. As a result we opted for more virtual hearings. We heard 44 of such cases from the start of the pandemic until mid-December. This was mostly to facilitate judges who could not travel back to Seychelles and for clients and witnesses who could not travel. Judges had also to resort to virtual technologies for meetings. I thank our IT team for their tireless work in setting up the zoom calls and in resolving our various internet issues that we encountered in that regard. In our quest in ensuring public safety we have adopted and put into effect our own Covid-19 Rapid Response Protocol as and when the need has arisen.

This pandemic has taught us many lessons and we at the Judiciary, amongst other innovations, feel that we need to review the Judiciary's digital infrastructure in order to accommodate remote hearings, filings, and payments. Investment in new technologies have the potential to facilitate increased access to the Courts, reduce costs, and improve efficiency, and COVID-19 highlighted untapped potential. The next strategic plan will see the roll out of more tech-based solutions.

We had been so far operating in a tone down vacation mode since December last year, with the courts and the tribunals closed. The only judicial services being rendered were by a duty judge and a duty magistrate whose sole objective was to virtually extend remands and take remand applications; adjourn matters and hear extremely urgent cases. Other administrative services were carried out on designated days only.

After the opening of the court today, although all of our courts will be active, our activities will be reduced. I am conscious of the fact that the Judiciary plays an important constitutional function and that we need to be available in order to give access to our system of justice to the public. This is their constitutional right. Our service is an essential service.

However, I am also conscious that we are living in extraordinary circumstances, where we need to balance the right of access to justice with the right to health. Therefore, even though we will be open for business and all courts will be sitting it would not be business as usual. There will be restrictions on the number of clients in the court rooms and possibly more adjournments in trials as we do not want the accumulation of witnesses at the court. We will do our best, as far as resources are available, to use new technologies to avoid face to face contacts. The aim is to keep our premises open, subject to strict public health requirements. This would be the case until further announcement. The amended Standard Operating Procedure will be issued shortly by the Registrar.

In these difficult times I called for more solidarity and understanding between our fellow citizens. If there was ever a time when we should amicably settle a case with our neighbour on the way to court, it is now. This would be less costly for all of us and on many levels. Though it is your right to sue, please attempt to reserve your suits to cases in which all attempts at reconciliation has failed.

I also call on Judicial Officers and Legal Practitioners to be flexible in their approach to the administration of justice during this period. The court should be able to take judicial notice of events happening in the community that will adversely impact its procedures and the court schedules and counsels should reciprocally understand the limitations that those events places on the court's capacity.

Our people also need to be conscious that restrictions of liberties by the state, such as those found in the Public Health Regulations providing for curfew after 8 pm; mandatory wearing of facemasks and restrictions on gatherings have been done by a law in the public interest. They need to abide to it. So far there has been 91 prosecution for the offences of Breaching the Prohibition of Outdoor Movements and 30 offenders have been convicted. In our effort to control the spread of this virus, we will be severe with persistent offenders and if a fine does not act as a deterrence for them, we will strongly consider imposing custodial sentences.

### **Closing remarks and vote of thanks**

I thank all those who have diligently and dutifully carried out their duties in the year 2020 striving to abide to its theme, Courage and Commitment. Now as we move forward in this year, it is evident that if we want peace we need to cultivate justice. Let this not be a mere slogan but let us live and practice the principle and sentiments that it echoes.

To my colleagues Justices; Judges; Magistrates; presidents and members of tribunals, thank you for your hard work in these trying circumstances.

This year we need to be even more innovative and flexible in our common approach to the administration of justice as we adjust to the new and ever changing environment. For this to happen we more than ever need to work in the spirit of unity and collegiality.

To our stakeholders in the administration of justice I want to tell you that we cherish your partnership and we are grateful for your dedication to the ethics and codes of your professions. You are members of the private bar; the Attorney General and members of his office; the Commissioner of Police and members of the Police Force; the Superintendent of Prisons and members of the Prison Services; the probation services; the social services amongst so many others of which the numbers are too many to mention.

A special thank you goes to SBC and Telesesel, which has managed to bring this event live to our homes and work places.

Lastly, to our clients, the people of Seychelles - thank you for your patience and your understanding of the limits and constraints that both the law, lack of resources and our present circumstances imposes on us. We will continue to strive to make our procedures and practices more user friendly in order to ensure that you get the Judiciary that you deserve.

The COVID 19 epidemic has affected our daily routines; our professional activities and our service delivery. Let us take this challenge and turn it into opportunities. The necessity for us to adapt to the circumstances that it imposes has brought the best out of us, and the organizations that we represent. Let us make good use of those new traits and conditions. Our prayers go to the medical personnel on the front line; may God give you the courage and strength needed to persevere in your daily battles.

We will win this war. And after the sweet taste of victory, the story of your war contribution that you should tell to your children and grand-

children should be a good one. You should be able to tell them that you positively contributed to the outcome by abiding to all the regulations of the health authorities; taking the protective measures and making those personal sacrifices that you felt necessary in order to adjust to the new economic environment.

I wish you a good and fruitful 2021 judicial year, may God bless the Republic and peoples of Seychelles.

**Thank you.**

R J Govinden

Chief Justice

15/2/21