

JUDICIARY OF SEYCHELLES

CONSTITUTION DAY ROUNDTABLE

OUTCOMES OF EVENT



The discussion topic was
"The Right to Legal Representation".

Is our current legal aid system effective? What are the challenges faced by the parties involved? Public, Lawyers, and Administrators?

The quality of legal representation. How does the current quality of legal representation available in Seychelles affect persons coming to court, and the outcome of their cases?

Public awareness. In what ways can we engage the public to improve their understanding of legal representation? How can the challenges faced by either party be remedied?

POINTS RAISED

- The right to legal representation is an important right which forms basis of democracy and is not only based on Article 19 of the Constitution, but also on the basic idea of the Rule of Law. The right to legal representation forms basis of democracy, and due to technicalities and difficulties, persons need to be adequately represented.
- There is a decline in the quality of legal representation, which deeply affect's people's right to legal representation that is efficient and satisfactory, In addition, lawyers are not interested in pro bono/legal aid. As a result, matters are delayed and held in abeyance. Ethical standards aren't being observed by some, and the Bar needs to take action.
- The Bar Association raised concerns about the legal aid fees which are insufficient and do not take into account inflation costs. He stated that research conducted showed that the hourly rate standard should be considered i.e. 250 – 450 /hr. to cover costs. Therefore it's necessary to look at the fees and make these in line with the costs of operating. A financial means test should be conducted to ensure that it does not take away from those deserving legal aid, and away from increasing the legal aid fund. There is also the issue about lawyers having too many cases to handle at a time, hence there is a need to increase the number of lawyers qualifying.
- The Chief Justice stated that there are discussions taking place to revamp the legal aid scheme, and build a means test into amendment to the Legal Aid Act. Currently the Judiciary has no capacity to remedy the issue of the payable fees to lawyers, and rising costs.
- It should be noted that Legal Aid is a civic **duty**.
- To deal with the means test issue and likelihood of giving a false statement which is perjury, consideration should be made to recover the money with a penalty
- Judiciary should have oversight over the behavior of counsel to maintain the standards.

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- Ministry of Internal Affairs raised concerns about trafficking and migration matters and the translation problems arising there. The Attorney General's office confirmed that they are providing training on human trafficking and gender based violence.
 - Former President of the Court of Appeal, Justice MacGregor raised concerns about failure of counsel to return clients calls and provide feedback.
 - Legal researcher Nyasha Katsenga raised the need for compulsory continuous legal education (CLE), to improve the counsel practicing standards.
 - There were discussions on creating channels for Alternative Dispute Resolution (ADR) to cut down on the number of matters that reach the courts.
 - Judge David Esparon raised concerns about pleadings that are not up to standard, the non-appearance of counsel, and the consequent effects i.e. offering the best service vis a vis legal negligence. While he agrees that CLE would be useful, a change in mindset would be required in the legal fraternity.
 - Judge Brassel Adeline emphasized that a new framework is required to deal with this problem. Further, that consideration should be given for a council, probably comprising of respected members in society to hold counsel accountable outside of Judiciary itself.
 - Transparency Initiative inquired about platforms to obtain information on legal aid etc. and where people could lodge complaints if necessary.

PROPOSALS

- Amendments must be made to overhaul the **legal framework** concerning fees, means test for prospective clients, etc.
- The Judiciary will continue looking into the quality of service vis a vis professional conduct & ethics but require assistance from the Bar Association. However due to the issues that can arise from the profession regulating itself, a separate, **independent Board** could be created for this purpose.
- This independent board could **regulate the legal profession**, attend to disciplinary matters – this would avoid burdening the Judiciary which has to remain independent and impartial at all times.
- Continuous **legal education** and change in mindset must be fostered.
- There is a need for other mechanisms to deal with complaints against the lawyers – the **Fair Trading Commission** stated that while they have never received complaints before about lawyer conduct or services, they could technically provide this as a service to the public.
- Transparency Initiative suggested that a **whistle blowing mechanism** be created so that lawyers who feel compelled to flag any questionable behavior within their profession can do so without fearing unwarranted repercussions.
- **A Law Centre / Public Defender system** was also proposed by senior lawyer Bernard Georges. It could also be a system where persons can choose their own lawyer, who then charges market rates. Fees are audited by the Judiciary and the Government, who pay the bill and prevents the need to shoe horn to a government budget. A law centre, as it existed previously, charged low fees and allowed lawyers to act on a contingency basis (low fees upfront and payment later) which benefited both the clients and the lawyers. Hence Mr. Georges suggested to consider allowing contingency fee agreements under supervision of the Judiciary.
- The Attorney General's office has proposals to amend the Courts Act with procedural assistance to **persons with disabilities** i.e. sign language, braille etc.

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