



CHIEF JUSTICE RONY J. GOVINDEN'S SPEECH FOR THE OCCASION OF THE RE-OPENING OF THE SUPREME COURT, JANUARY 10, 2023

THEME: "THE JUDICIARY – JUSTICE FIRST"

Welcome

President of the Republic of Seychelles, Mr Wavel Ramkalawan, First Lady, Mrs Linda Ramkalawan; Vice President of the Republic of Seychelles, Mr Ahmed Afif and Mrs Stella Afif; Speaker of the National Assembly, Mr Roger Mancienne; Excellencies and members of the diplomatic corps; President of the Court of Appeal, Justice Anthony Fernando; Justices of Appeal; fellow Judges of the Supreme Court; Hon. Attorney-General; Bishop Harel; Bishop James Wong; Registrar of the Supreme Court; Master of the Supreme Court; Magistrates; Attorneys at law; members and staff of the Judiciary; members of the press corps; ladies and gentlemen, good morning.

Introduction

Today we mark the occasion of the re-opening of the Supreme Court for the year 2023, following its recess which commenced in mid- December last year. This is our first re-opening post the Covid-19 outbreak, and as you can see, it is following the traditional format of the Court's opening. On this occasion the head of the Supreme Court traditionally makes a public address and informs the country of our challenges and achievements of the previous year, whilst at the same time articulates his or her vision for the new legal year.

This is done partly with the aim of keeping this important pillar of our democracy relevant, and at par with the aspirations of the people that it serves. It is an opportunity for me to share our successes, our challenges, the way we intend to move forward this year, and our perspective on some issues that have been in the public domain regarding the Judiciary.

Opening remarks.

This year the President of the Republic has again graciously accepted our invitation to share this moment with us as the Head of State, as compared to the head of the Government. So has the Vice President. I say this in order to dispel some confusion that may linger in the minds of a few individuals. As Head of State, the President, and in his absence the Vice President, has certain important constitutional roles. For example in that capacity he appoints the Judges after they have been proposed to him by the Constitutional Appointment Authority; he can also remove Judges from office if a disciplinary tribunal so recommends. He also has the power of pardon and he receives and accepts the credentials of foreign envoys. These are but few of his powers as Head of the Republic.

Besides this, he is also the head of the Government and the Commander in Chief of the Military forces. It makes sense therefore that as Head of State he is invited, on this occasion, to hear what we have to say. This does not affect the separation of powers between the Executive arm of the government and the Judiciary, because as the Head of State he is not here as representative of the Government and the Executive, and he is not intruding upon judicial powers. We need to be able to understand, cherish and appreciate these subtleties enshrined in our Constitution. It is to be noted that similarly the Judges are invited to the opening of the National Assembly and the inauguration of the President. His presence here does not constitute an interference, same as my presence at the Presidential inauguration and the National Assembly would not. It is a sign of mutual respect.

The media and the Judiciary

I have watched with great admiration how judicial decisions have become important media items. This has created a thirst for more of those kind of items to be made available to members of the public through the different media platforms. The Judiciary has its own platforms; we have our website, our monthly newsletter, as well as the *Seylii* website onto which up to date judicial decisions are uploaded and discussed. Members of the media continue to have access to all of our courts rooms, and they are free to report on any court cases without any judicial restrictions, unless the specific circumstances of the case make it otherwise. As I have said before the right to fair trial calls for transparency in judicial determinations, which also means an open court and public access to trials and hearing.

It is in this spirit that we see journalists and members of the media as vital partners in ensuring that the rule of law is maintained in our democracy. However, I believe that the form of the reporting of court decisions can be improved. The style has been to wait at the door of the court and then to interview accused or other litigants or their lawyers at the end of the case. Most the time they are simply asked what are their views about the court decision. A person who has been convicted or sentenced will never say that he or she is satisfied with the decision, as honest to themselves as they may be. Most of the time what happens is that out of sheer frustration they would criticise the Judge instead of the decision. This almost invariably applies in all cases of interviews of the losing parties, whether the cases be criminal, Constitutional or civil.

What I believe should happen is that the media takes a more in-depth approach to what actually happened after reading the decision, especially those decisions that have public interest importance; instead of a knee jerk approach. This will allow for less sensational reporting of the issues at hand. This would in turn generate more profound debates by members of the public on the bigger issues having to do with the cases.

My advice therefore is, interview the victims or the complainants and get their views; seek the views of the civil society and those of the prosecuting authority. Look at the pattern of criminal behaviour and their prevalence in court. Focus on the holistic and bigger picture; seek outcomes that will lead to changes in attitudes to certain criminal conduct and mind-sets. In this way our very good partnership will be taken to greater heights. The Judiciary's role is not only to punish and sanction but also to assist in the change of behaviours for the good of the society, and the public realisation of this goal incalculably assists in the administration of justice. The Judiciary has statistics and other information that can assist you in this endeavour.

The media should also focus on court decisions other than convictions and sentences of imprisonment. Focus should also be on acquittals and discharge of accused persons, and the reasons that these occurred. This should help the public to get a balanced approach to judicial issues and remove any misconceived perceptions.

Public Perception

This leads me to the next subject, which relates to public awareness and perception of judicial decisions. It is in the nature of things that one party will lose in a

judicial contest. An accused would either be convicted or acquitted in a criminal case. Either a plaintiff or a defendant will win his or her case, and where the circumstances warrant, walk away with a sum money paid by one to the other. A constitutional petitioner or respondent may or may not win its case. Though we have a system of mediation in civil cases, where the court assists in leading litigants to a shared or compromise outcome, litigants in their great numbers still want to have their days in court. Hence our adversarial judicial system means that one party will win, with one walking away happy and the other not so happy.

For the minority who are unhappy, in some instances instead of looking at the realities of their cases they look the decision maker and start to making personal attacks on him or her, which then degenerates into a frenzy of hate. In the long run this creates a distrust in our judicial system which is dangerous for our democracy. One should be aware that people in the system come and go, but the system remains. Once generational or systemic distrust in the Judiciary is created, the system that should have earned your trust fails you, or tomorrow your children, when they might need it the most.

I am conscious of the fact that we as Judges are human, and sometimes we make mistakes in our decisions. However there are ways and avenues to address those rather than to attempt to attack judicial officers in the public arena, when they are, by law, placed in a position not to be able to publicly respond to such attacks. This, of course, leads to little positive results. One way of dealing with unsatisfactory judicial decisions is to appeal to a higher court. Another is to instruct your lawyer to do so by way of motion in the case, if the case is still underway.

It is for similar reasons that I will call upon my fellow Judges to ensure that your judgment are properly motivated and properly supported both on the facts and the law. In the same vein, afford enough time and opportunities to the parties to prepare and defend their cases. The more you justify your decision in clear and straightforward terms, and the fairer you apply the procedure, the more understandable and satisfactory the decisions become; and the more they are understood, the more they would be respected by the end user, though they might not necessarily be content with them.

I say this with all sincerity and in good faith as a firm believer in the freedom of expression which we all cherish and I thank the people of Seychelles who in their majority respect the judicial decisions.

“The Judiciary: Embracing Change”.

Our theme for the last judicial year was “*The Judiciary: Embracing Change*”. The changes that we want to achieve are found in our Vision 2021-2025 Strategic Plan. In this Plan the Judiciary has reflected on a broad range of issues that speak to the challenges faced by judicial officers, judiciary staff and the institution as whole. Vision 2021 – 2025 is the product of the collective reflection of the Judiciary. The Plan seeks to actively lessen the different hurdles that stand in the way of the maintenance of a strong, impartial and accountable Judiciary. The following aspects were considered in the formulation of Vision 2025 and had been the subject matter of our drive for change last year.

1. Develop and promote efficient, accessible, consistent and complementary court processes;
2. Innovating case management;
3. Improving access to justice through legal aid;
4. Improving employee relations;
5. Promoting a professional, supported and respectful workplace and culture;
6. Repositioning the public image of the Judiciary;
7. Maintaining public confidence through outreach, transparency and access to the Judiciary;
8. Upgrading and maintaining basic and digital infrastructure;
9. Stakeholder cooperation, collaboration and engagement; and
10. Financial autonomy.

I will highlight some of our achievements and challenges within the context of this strategy.

Upgrading and maintaining our infrastructure

In October 2021 we started the exterior renovations of the *Palais de Justice* (PDJ) which was funded by way of a grant from the Chinese Government. This was successfully completed in March and handed over to the Judiciary in April, 2022. Now we have an almost new PDJ. We also carried out the internal painting of the PDJ, and given that the laminated wooden flooring had been worn out over the years, tiling in the Court Rooms and back offices were also required. Work started on the 24th of January, 2022, and went on for a 4-month period. With very careful planning we managed to do it without affecting our services, and work was completed by May of last year.

Late last year work started on the partitioning of the Attic in order to make more efficient

use of empty spaces, to support the growing archives and address the shortages of office space. Given the cost, the project will be spread over 2 years and would be carried out in three phases. The 1st phase, which will include a Judges' Lounge and offices, is expected to be completed this year. We also achieved the automation of the two main gates at the PDJ. The two double gates on the premises which were installed in 2013 when the building was completed have been subjected to wear and tear, as a result requiring repair to ensure the security of staff. With automating the gates it is much easier and practical to make use of remote control to open and close the gates.

We, however, still have some challenges with regard to space. The Registry does not have storage facilities to keep large moveable properties, such as vehicles and other assets that have been subject of court seizures pending their sale. The ideal place should be in a secured and covered place that would allow the assets to retain their values. Presently, we have a case where such seized items are being kept in our public parking. We would have to seek the necessary facilities as such large seizures are increasing.

In terms of infrastructure, it has become also clear that the Magistrates Court at Anse Royale, situated in the same building housing the police station, has served its time and will have soon to be relocated given the structural state of the building. This would also be something for us to consider this year.

The collection of maintenance payments which was formerly being done by the Agency for Social Protection has now been transferred to the Judiciary. However, this has necessitated some minor structural adjustment to the cashier section.

Continuing Legal Education for Judicial Officers

With a view to changing the concept of judicial education, the Judiciary has embarked on a training program for its judicial officers in collaboration with the JIFA. The Judicial Institute for Africa (JIFA) is based at the University of Cape Town, South Africa, and is a partnership between the Democratic Governance and Rights Unit (DGRU) and the Southern African Chief Justices Forum (SACJF). It is a training institution that is greatly assisting us when it comes to judicial education. Last year, similar to previous years we have benefitted from their training and workshops programmes. More than ten judicial officers attended various courses on core skills; promotion of the Rule of Law; cooperation in prosecution of terrorism offences; judicial leadership, etc. It is my hope that this programme continues.

As far as legal training is concerned I am of the firm view that it is necessary to have continuing legal education for lawyers. It was with this in mind that I have instructed the Hon. Attorney-General to consider putting continuing legal education as a component of the new Law Society Act, which is under consideration.

Last year, the Office of the Chief Justice, in collaboration with other stakeholders, hosted a symposium, which focused on Mutual Legal Assistance (MLA) within the criminal justice system. The purpose of the symposium was to highlight the relevant legislation and procedure which creates and implements the contours of the law relating to MLA. In doing so, it also brought forth an opportunity to share ideas on how to make the process more efficient. Justices, Judges, Magistrates, and legal researchers of the Judiciary participated in a full day training session on 7 January 2022 to become more familiar with the amendments made to the Civil Code of Seychelles

In April, 2022, the World Bank organized the Anti-Money Laundering, Anti-Corruption and Asset Recovery training for Justices, Judges, Magistrates, and legal researchers of the Judiciary. The training proved to be quite thorough, covering various areas such as international obligations in the recovery of the proceeds of crime, confiscation of the proceeds of crime through the criminal process instrumentalities, issues of legal professional privilege, and non-conviction based asset recovery, to name but a few.

A mock trial was held before Judge Gustave Dodin in the last week of the same month, led jointly by the UNODC and the Attorney General's Office to support the justice system in fighting maritime crime. The simulated week-long trial involved State Counsel from the AGs Office, Interpol, the Seychelles Coast Guard, Police Force, and the Seychelles Regional Coordination of Operations Centre.

The Attorney General's Office in collaboration with the Judiciary and the National Council for Children hosted its first Mock Trial for school students on 27 June, 2022, to teach them the basics of the Constitution, court systems, and what the AG's office does. Prior to the mock trial, a mix of private and public school students attended an interactive workshop. The First Lady, Linda Ramkalawan, and CEO of NCC, were also in attendance to show their support. Panelists included Judges of the Supreme Court, Justices of Appeal and lawyers.

For the Constitution Day we hosted a Symposium known as the Constitution Day Roundtable. The theme chosen was "*The right to legal representation*", and all the issues relating to it, including the right to quality legal representation, legal aid, and

lawyers' code of ethics. It was aimed at discussing the interaction with the law from the perspective of the citizenry, while also looking at ways to tackle the current limitations experienced in courts due to the current legal aid scheme, and to discuss the way forward. Speakers and attendees included a variety of stakeholders in law enforcement, legal practice, University students, Transparency Initiative, Human Rights Commission.

Individual and Institutional integrity.

As far as promoting individual and institutional integrity is concerned, last year we engaged with the Constitutional Appointments Authority in order to further strengthen the constitutional provisions with regards to judicial accountability. As we speak, this is a work in progress and we intend to forward a draft legal provision for their consideration, to see how we can institute some reform in this sector with a view to strengthening judicial integrity.

Professional trainings and the development of court personnel is an important component of Vision 2025 and was supported last year. Well-trained court personnel create the realization—and the perception among court users—of judicial integrity and transparency of court operations. A training needs analysis was conducted last year, and its outcome would be implemented this year. Along this line the Judiciary has recently released a Handbook for support staff and court users which contains a simplified breakdown of our different activities in an attempt to make our services more user friendly. This will soon be available on our website.

The Judiciary continues to provide our employees with an Employee Incentive Program to attract, engage and retain talent, the result of which has been positive staff motivation. Many schemes of service for the various staff cadres have been similarly improved. The Judiciary had engaged the Guy Morel Institute which had offered different courses for our staff, and late last year we did the presentation of awards of Diplomas and Certificates in Management. In collaboration with the University of Seychelles a course at certificate level in Paralegal Studies was developed and is expected to be implemented in 2023.

Other initiatives like the improvement of general facilities, enhancement of uniforms, an improved health program, amongst other incentives, was also introduced.

Embracing Technology and Improved Judicial Information Management.

We continue to seek to explore the use of cost effective technologies to realise our core Constitutional objective. We undertook the necessary upgrades, as a result of which five Supreme Court rooms have been equipped with virtual hearing facilities for leading of the evidence of overseas witnesses. As of last year, almost all our Magistrates Courts are now equipped with video link facilities, and transmit video footage. With the assistance of the UNODC the Judiciary has since last year started the introduction of a new case management system having more user friendly options than the current system. There is also introduced a fully automated cashiering system for payment of fines and fees. The Magistrates Court at Anse Royale court has been equipped with a new recording system.

The Andre Sauzier Law Library and Seychelles Legal Information Institute has been engaged in digitizing all of the Judiciary's court judgements from 1984 to the present. At the time of writing we are still engaged in the process, but the goal is to present the people of Seychelles, and the world, with electronic access to all our courts' judgements.

An Accountable Legal Profession.

The Legal Profession is accountable to the clients it serves. The Supreme Court bears the responsibility for the discipline of legal practitioners for malpractices and professional misconduct. However with the increase in the number of legal practitioners and legal activities, and the inefficiency of the Seychelles Bar Association in disciplining its own members, it is clear that there is a need to rethink the way that the system works in order for us to have a more accountable legal profession. After seeking the input of the Hon. Attorney-General and the Bar Association, we have forwarded to the Government through the Attorney-General's Office a Seychelles Law Society Bill, which provides for the establishment of an Executive Council. The Law Society will be an autonomous body to which all lawyers would be members, with powers of self-discipline of its members who commit different disciplinary offences. The sanctions provided would include disbarment. It is hoped that this would put us at par with most Commonwealth jurisdictions. We urge the Executive and the Legislature to prioritise this Bill.

Staff movements

Last year three young and dynamic Seychellois ladies were appointed as Magistrates in the lower Judiciary, bringing even more gender parity to the courts. They are Ms. Larah

Michaud, who is also a Vice Chairperson of the Family Tribunal; Ms. Emily Gonthier, who is also appointed Chairperson of the recently established Fair Trading Tribunal following the enactment of the new Fair Trading Act; and Ms. Kelly Louise, who is also appointed as the Vice Chairperson of the Employment Tribunal. As we are all aware, all the Tribunals operate as independent judicial bodies in accordance with the Constitution. It is my sincere hope that they find a career path within the Judiciary and that they are elevated to the highest offices.

The Ministry of Finance has proposed that the Judiciary create a Small Claims Tribunal, something that will help our country in easing the doing of business by putting small cases before a special court with simplified procedures. This would also relieve some pressure on the Judiciary. We are positively considering the proposal because we believe that this will help us to make to court process more expeditious.

In the period January until November, 2022, 21 vacancies were filled, which included replacements and creation of new posts such as Gardener, Driver and Accounts Assistant. These recruitments covered all sections, including the recruitment of a Legal Researcher in September. Sadly we saw the retirements of two long serviced staff members who had served as Heads of the Civil Registry and Housekeeping, the former had 35 years of service and the latter 41 years of service with the Judiciary. Their long and dedicated service has proven to be worthy of emulation. I again here extend to them my deepest appreciation for their services.

The rate of staff turnover is still high in certain sections, principally in the Interpretation Section. I am conscious of the need to put into place better strategies that will ensure greater retention of staff in such sections, and that remains a priority this year.

Admission of Attorneys-at-Law and Notaries

During the year 2022, two Sate Counsels were officially admitted as attorneys-at-law after completing their two year pupillage in the Attorney General's Chambers. In the private practice twelve young individuals were officially admitted as an attorneys-at-law after completing their two year pupillage

During the year 2022, five legal practitioners have been sworn in as Notaries by the Chief Justice.

In 2022, there were 8 candidates who sat for the Examination which took place from 22 November to 2 December, 2022. Their results are still pending.

Statistics

Courts performance is measured by considering two criteria. The first is the overall case disposal rate, while the second is what percentage of the total cases is constituted by older cases (backlog). The goal is to reach a plateau where the backlog is a nominal percentage of the total cases, and the number of completed cases is largely on par with the number of cases filed.

A total of 3957 cases have been filed before the Supreme and Magistrates Courts from 1st January, 2022 to 30th November, 2022. All in all, in the last year 4587 cases were concluded, as we continue to decrease the backlogged cases. There are still 2295 cases pending before the Supreme and Magistrates Court, both civil and criminal.

In the Employment Tribunal 248 cases were filed were filed in the period under review (1st January – 30th November, 2022), 227 were concluded, and overall there are in total 243 cases still pending, including the backlog.

In the Family Tribunal 1386 cases were filed in the year 2022, 1052 were completed and there are 1781 cases, including the backlog, still pending on the register

The Office of the Chief Justice continues to actively monitor the case management and the reduction of the court case backlog. The reduction in old cases remains a top priority for my office and this year I will proactively seek to reduce the number of accumulated cases on our registers.

The theme for 2023

The theme chosen for this year by the Events Committee of the Judiciary is: ***“The Judiciary - Justice First”***. This theme is a reminder as regards the reason we are here in the first place. Irrespective of the complexities of the legal and judicial environment, our task is to deliver on justice. We have no other objectives other than

that. How then can the Judiciary deliver fair and impartial justice in a more effective manner and meet new and increasing demands, while adhering to its core values?

I suggest that these are but some ways of doing so – having exemplary and independent Judges, high quality employees, conscientious jurors, well-reasoned and researched rulings, time for deliberation and attention to individual issues – these are among the hallmarks of federal court litigation.

Equal justice requires fairness and impartiality in the delivery of justice and a commitment to non-discrimination, regardless of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability; managing scarce resources and prioritising them in more needy areas; introducing more user friendly rules and regulations; managing court users’ expectations and timely delivery of decisions. We intend to implement this theme, as we have all of our past themes, within our strategic plan pillars as I have related to above.

The theme “Justice First” is a reminder to all judicial officers of what we are here for. Our mandate is to deliver on justice for the people of Seychelles in its global sense. It is a reminder of our constitutional oath of office. With emphasis on the fact that justice does not only needs to be done, but be seen to be done. Our courts should always be open, just as our minds should be open before we hear a case, and that we make our decisions only on the law of the land and facts before us, and on nothing more.

In that regard, I as the head of the Supreme Court, will continue relentlessly to defend our independence and impartiality. I give my guarantee that I will defend our autonomy at all levels, and that I will seek to preserve all acquired rights without discriminations.

In that respect, I thank all those who endeavours to work within our constitutional remits and to safeguard our most precious constitutional framework. We are all here temporal, but the constitution is eternal. Let us take our moments to make it stronger so that it survives the test of time for the sake of our sons and daughters. Being human, it is easy to lack this power of foresight, especially when the passion of daily realities may blur our vision of things. This longevity and strength depends on our day to day efforts; the constant struggle to do what is legally and morally right.

The Constitutional Court is there to address grievances as of last resort. I say of last resort because there is always scope for settlement before a case is filed. While seeking to resolve constitutional disputes, however, the avoidance of such disputes is even more commendable.

We have noticed a gradual change in our attitudes and outlook towards one another. We are these days too ready to employ hateful speech and fake news in order to denigrate one another. We have little time to verify the content of what we say. We act on impulse, many times simply to be seen to be in the moment or in the know. These negative attitudes foster a cycle of violent thinking, which occasionally leads to criminal behavior and an attitude of defiance to law and order, inevitably resulting in criminal charges.

By the time that such behaviour ends up before the courts, the damage is done. It is evident therefore that the more tolerant and respectful or at least mindful we are, the more we are supportive of the greater cause of justice, by reducing violence in its many forms. For this to happen we need to develop a greater spirit of understanding, kindness and respectfulness towards one another, and in so doing assist the Judiciary in its mandate in continuing to put justice first.

Closing remarks and vote of thanks

I thank the Head of State and the Vice President for attending our ceremonies and we wish you all the very best for this year. The same vote of thanks goes to the Speaker of the National Assembly.

To my colleagues Justices, Judges, Magistrates, Chairpersons and members of tribunals, thank you for your hard work in the past judicial year. This year I will continue in my endeavour to promote the good cause of the Judiciary on your behalves. I really appreciate the strong spirit of collegiality that is prevailing within the Judiciary, as this has ensured that we have attained our core objectives for the year. I appreciate that you perform a lonesome and mostly thankless job in a difficult world, where you may not be understood. Let us continue holding one another up.

I thank all those who have diligently and dutifully carried out their duties in the year 2022. As we now move forward in this year, let us remind ourselves that justice is our prime consideration in all areas of our duties. Let us, all of us, value our jobs in

all areas. As menial as our job may be, at the end of the day it is making sure that that judicial system is working, without which it will not work as it should.

To our partners in the administration of justice - the Honourable Attorney General and to members of his office, the Commissioner of Police and members of the Police Force, the Commissioner of the Anti-Corruption Commission and members of the ACCS, the members of the Bar, the Superintendent of Prisons and members of the Prison Services, the Probation Services, the Social Services, amongst others too numerous to mention, thank you to your selfless devotion to the codes of your professions. We value any contributions that you may bring to the administration of justice.

A special thank you goes to the different media houses for their court reporting and we look forward to our continued partnership. Special thanks goes to the SBC, which has managed to bring this event live to our homes and work places.

Lastly, to our clients and court users, we try to respond to your needs as best as we can, and with the resources that we have. We understand that we have many areas where we need to improve, such as removing unnecessary delays and cumbersome procedures. I assure you that we are actively trying to resolve such issues. You, however, remain firm believers in the Rule of Law and our liberal democracy, where the Judiciary remains the final arbitrator in legal disputes; and for this we are grateful. You can count on us that we will put justice first always.

I wish you all a good and prosperous 2023 judicial year, may God bless the Republic and peoples of Seychelles.

Thank you.

R J Govinden

Chief Justice

10/1/22