

**THIRTY YEARS OF THE CONSTITUTION AND ONE HUNDRED AND
TWENTY YEARS OF THE SUPREME COURT**

Delivered by the Chief Justice

Palais des Justice

20th June 2023

WELCOME

Speaker of the National Assembly;

The President & Justices of the Court of Appeal;

Judges of the Supreme Court;

The Hon. Attorney-General

The Leader of Government Business;

The Ombudsman

The Chairperson and member of the CAA.

Hon Magistrates;

Registrar of the Supreme Court;

The president & members of the legal professions of Seychelles and members of the Attorney General's Office.

Members of staff of the Judiciary;

Members of the Press;

Ladies and Gentlemen,

INTRODUCTION

It is my great pleasure to welcome you to this auspicious occasion, being our commemoration of 30 years of the Constitution and 120 Years of the Supreme Court. I am honored to deliver this key note address and to set the tone. Ladies and

gentlemen, 120 years of being an institution is no small feat. Our Supreme Court has survived through thick and thin but has remained always the mainstay of our justice system. This year, with the advent of 30 years of our Constitution, we have decided to have a double celebration. We celebrate our great maturity and what we have become.

This occasion will also serve a practical purpose as a means of taking stock; an exercise of reviewing of the past, the present, with a view of making a better future. The views and opinions raised and shared today will assist us in improving on our shortfalls as an institution so that we can forge ahead with greater vigor.

I will commence this address by tracing the historical antecedents of the Supreme Court of Seychelles.

THE FRENCH PERIOD

The court which we called the Supreme Court was inexistent in both form and concept during the French

On November 1, 1756, France took possession of the yet uninhabited islands of Seychelles. Through this act of possession, the laws of the *Compagnie des Indes* became applicable to the islands comprising Seychelles.

By 1770, when the islands began to be inhabited, the “Code Noir” – the decree passed by Louis XVI (1643-1718) in 1685, to establish the conditions of slavery in the French Colonial Empire – became the applicable law in Seychelles. This was followed by the Civil Code in 1804 and the different Codes to be known as the Codes Decaen in the early 1800’s, promulgated in Mauritius.

Jean-Baptiste Quéau de Quincy (1748-1827) arrived in Seychelles on September 9, 1793, to take up his appointment as the last French Commandant of Seychelles. He had the sole authority to adjudicate on civil and criminal offences, in conformity with the edicts of the colonial Assembly of Ile de France (Mauritius).

On March 18, 1812, Quéau de Quincy was appointed *Juge de Paix*, a little over a year into the British takeover of Mauritius. He held this post until his death in 1827.

It can fairly be said that he was the sole local judicial authority during this period.

BRITISH PERIOD

The colony of Seychelles was ruled as a Dependency of Mauritius which Britain had taken possession of on December 3, 1810. It was therefore considered more pragmatic for the judicial system of Mauritius to regulate the administration of justice in Seychelles, with the executive and legislature based there. For many decades, the civil agent or Chief Civil Commissioner of the Seychelles was appointed by the Governor of Mauritius.

The administration of the Dependency was based on Regulations issued by the Governor of Mauritius to the Chief Civil Commissioner of Seychelles who then, by Proclamation promulgated the Regulations which then became Law. In 1843, when Charles Augustus Mylius (1795-1873) was commissioner, a District Court was established in Seychelles by the Mauritian Ordinance No.13 of 1853, the precursor of the Supreme Court (Seychelles then being a Dependency, “a district” of Mauritius). At that time, the public prosecutor was known as *Procureur General*.

In 1889, the District Court became the Court of Seychelles. The precursor of our Supreme Court. The District Judge became the “judge of Seychelles” and the District Clerk of the said Court became the Registrar of the Court of Seychelles. Nevertheless, the trial of Capital offences had to be conducted in Mauritius because it was not possible to obtain a good jury in Seychelles. Moreover, the judge who conducted the preliminary inquiries also presided at the trial. The judge was in fact also the Stipendiary Magistrate.

In 1898, two judicial establishments were created. These were a Police Court, which was a Court of Criminal Jurisdiction in the charge of a Police Magistrate who was empowered to make criminal inquiries into capital offences and to commit any person or persons for trial before the Court of Assize; and the Office of Crown Prosecutor, which was empowered to conduct criminal investigations and to institute prosecution before the Court of Assize based on his own information that did not have to be on oath. Such was the state of the judicial department that in 1899, the Crown Prosecutor was also the Police Magistrate. Furcy Alfred Herchenroder (1865 - 1968) discharged both duties.

During that particular period, it became evident that certain formalities enacted in the past to regulate the modus operandi of the court had to be dispensed with to render the administration of justice more efficient, regarding especially the trial of capital offences. An Order of Council of 1892 required that the examination and depositions should be transmitted to the *Procureur General* of Mauritius, who had

the responsibility to decide whether the prisoner should be put upon his trial for the capital offence, where upon he sent to the Judge signed documents. Until such information was received, no trial could take place.

It was in 1903 when Seychelles was erected into a separate colony that the judicial establishment witnessed its major transformation. The *Seychelles Judicature Order in Council, 1903*, created the Supreme Court of Seychelles in its present jurisdictional form. The court consisted of one Judge who was the Chief Justice of the Court. Appeal cases from final judgments of the Court in civil matters were transferred to the Supreme Court of Mauritius. This applied also to convictions with penalties that exceeded two years imprisonment or two thousand Rupees fine, provided that the ground of such appeals were based upon erroneous applications of the law.

The relevant portions of the Seychelles Judicature Order in Council read as follows:

“II

CONSTITUTION OF COURT

3. There shall be, as heretofore, in the Colony a Principal Court of Civil and Criminal Justice which shall be called the Supreme Court of Seychelles.

4.—(1) Such Court shall be a Court of record and shall consist of one Judge, and shall bear on its seal the Royal Arms with the words "Supreme Court Seychelles".

(2) Until such seal shall be provided for the Supreme Court of the Colony the seal now used in the Court of Seychelles shall continue to be used.

5. No person shall be appointed to be a Judge of the Supreme Court of Seychelles unless:—

(i) He is qualified to practise as an advocate in a Court in England, Scotland, Northern Ireland or some other part of His Majesty's dominions having unlimited jurisdiction either in civil or criminal matters, and

(ii) he has been qualified for not less than five years to practise as an advocate or solicitor in such a court(a).

III

JURISDICTION AND LAW

6. The Court and the Judge thereof shall have, and are hereby invested with, all the powers, privileges, authority, and jurisdiction which are vested in, or capable of being exercised by, His Majesty's High Court in England, as created under "The Supreme Court of Judicature Acts, 1873 to 1884," or any Judge thereof.

7. The Court shall be a Court of Equity, and is hereby invested with powers, authority, and jurisdiction to administer justice and do all acts for the due execution of such equitable jurisdiction, in all cases where no sufficient legal remedy is provided by the law of the Colony...."

The Seychelles Capital Offences Order in Council 1903, provided that capital offences should be tried and sentences of death executed in the Seychelles islands. Section 116 stated that: *"Every prisoner sentenced to death shall when execution is assented to and ordered in accordance with provisions of this order be hanged by the neck until he be dead."* The most notable of the application of the death penalty was in 1935, when on Saturday May 4, three men were hanged at 30 minutes interval for the assassination of a Chinese merchant on January 23, 1935. In 1934, a Juvenile Court was established.

During the 1940's the Colony's judicial system went through comprehensive changes. To enable the court to maximize its legal jurisdiction in all aspects, various ordinances were enacted to establish procedural methods for the courts in the execution of justice. For example, in 1944, the Justices of the peace were authorized to make inquiries into capital offences.

In 1947, the official designation of Crown Prosecutor became Attorney General. That happened when Governor Sir Percy Selwyn – Clarke (1893-1976) appointed Charles Evariste Collet (1900-1961) to that post. By 1948, the courts had been reorganized so that the Supreme Court tried crimes whereas the Police Court dealt with contraventions and misdemeanors. Appeals in criminal cases went to the East African Court of Appeal, whereas civil appeals from the Supreme Court went to the Appellate Court of Mauritius.

In 1964 the enactment of the Courts Act placed our judicial system firmly on all fours with the English Courts, and section 4 of the Courts Act until today reads as follows:

"The Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England.

No major changes occurred until our independence.

THE POST- INDEPENDENCE PERIOD

The 1st Independence Constitution

Seychelles gained its independence from Great Britain on the 29th of June 1976. In order to regulate the post-independence nation the UK enacted *The Seychelles Act*. Under this Act, *The Seychelles Independence Order* was enacted on the 9th of June 1976, which, amongst a number of things, brought the Seychelles Constitution into operation on the Independence Day. The Constitution was appended to the Order.

Chapter VI of the Constitution, specifically in Articles 86 – 93, provided for the establishment of the Judiciary and the Supreme Court. The relevant portions provided as follows:

"The Supreme Court

86. (1) There shall be a Supreme Court for Seychelles having such powers and jurisdiction as may be provided by any law for the time being in force in Seychelles.

(2) The Judges of the Supreme Court shall be a Chief Justice and such number of Puisne Judges as may be prescribed by law:

Provided that the office of a Judge of the Supreme Court shall not, without his consent, be abolished during his continuance in office.

(3) The Chief Justice of the Supreme Court shall be a person qualified for appointment under paragraph (5) of this Article and shall be appointed by the President, by instrument under the Public Seal.

(4) The Puisne Judges of the Supreme Court shall be persons qualified as aforesaid and shall be appointed by the President, by instrument under the Public Seal, after consultation with the Public Service Commission sitting with the Chief Justice as Chairman.

(5) The qualifications for appointment as a Judge of the Supreme Court shall be such as may be prescribed by any law for the time being in force in Seychelles:

Provided that a person who has been appointed as a Judge of the Supreme Court may continue in office notwithstanding any subsequent variation in the qualification so prescribed.”

Coincidentally, when Seychelles became a Republic in 1976, a new Seychelles Court of Appeal was also constituted by the Independence Order which consisted of a President, two Justices of Appeal and the Judges of the Supreme Court as ex-officio members. Appeals to the Court of Civil Appeal of Mauritius were abolished.

The 2nd Post-Independence Constitution

Following a *coup d'état*, and a successful referendum on 26 March 1979, a new constitution for the country went into effect. This constitution made Seychelles a one-party state with the sole candidate for president nominated by the ruling party. The Constitution of 1979 kept the existing judicature by providing for the establishment of the Supreme Court and the Court of Appeal. The former consisting of the Chief Justice and Puisne Judges. Provisions were similarly made for the qualifications, appointment, tenures, and removal of Judges. The relevant portions of the constitution relating to the Supreme Court read as follows:

“PART VI – THE JUDICIARY

Division 1 – The Supreme Court

63. A Supreme Court for Seychelles is hereby established.

64. The Supreme Court consists of the Chief Justice and the Puisne Judges.

65. (1) The Supreme Court has the jurisdiction prescribed by this Constitution and by or under any Act.

(2) Subject to any Act and to the Rules of Court of the Supreme Court, the jurisdiction of the Supreme Court may be exercised by a single Judge, or by a number of Judges sitting together.

(3) The jurisdiction of the Supreme Court may be exercised by a Judge or Judges notwithstanding that it is being exercised at the same time by another Judge or other Judges.”

What was notable was that there was the similarity in the procedure for appointment of the Chief Justice between the 1976 and 1979 Constitution, in both the appointment of the CJ was by a direct presidential appointment. However, the revolutionary spirit of the new government led to draconian new measures, with the sitting Chief Justice Obrien Quin being removed from office and expelled shortly after June 1977. For a while there was a vacancy in office, and Sauzier J Justice of Appeal is reportedly said to have refused the post of Chief Justice on the ground that taking such an office under a decree would be contrary to his oath of office, he however accepted to be acting Chief Justice until September 1977, when Earl Seaton was appointed.

The 3rd Post -Independence Constitution

Towards the end of 1991, Seychelles began the process of becoming a multi-party democracy. Discussions and public debates between the major political parties (namely the Seychelles People's Progressive Front and Seychelles Democratic Party) began to take place in January 1993. Following a referendum which took place on 18 June 1993, the current Constitution of Seychelles was adopted.

For the 1st time in our history our independence was enshrined under Article 19 (2) which provides that “*the Judiciary shall be independent and be subject only to this Constitution and the other laws of Seychelles*”.

The pertinent clauses with respect of the Supreme Court is as follows:

125. (1) There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have -

(a) original jurisdiction in matters relating to the application, contravention, enforcement or interpretation of this Constitution;

(b) original jurisdiction in civil and criminal matters;

(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction; and

(d) such other original, appellate and other jurisdiction as may be conferred on it by or under an Act.

(2) Proceedings in respect of matters relating to the application, contravention, enforcement or interpretation of this Constitution shall take precedence over other matters before the Supreme Court.

(3) The Supreme Court shall consist of the Chief Justice, the Puisne Judges and, subject to clause (5), the Masters of the Supreme Court.

PART IV - CONSTITUTIONAL QUESTIONS

Supreme Court as Constitutional Court

129.(1) The jurisdiction and powers of the Supreme Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution shall be exercised by not less than two Judges sitting together.

(2) Where two or more Judges sit together for the purposes of clause (1), the most senior of the Judges shall preside.”

HISTORICAL DIFFERENCES

From my analysis it appears that apart from the marked differences between the Supreme Court of 1903 and the post-independence Supreme Court of Seychelles in terms of powers of appointment and composition of the bench. Other provisions important constitutional provisions are not so pronounced. In other words, the constitutional provisions relating to its jurisdiction, powers and functions have survived 120 years Supreme Court. I will highlight a few differences and commonalities.

Procedure for appointment of Judges and removal

The Independence Constitution provided for the appointment of the Chief Justice by the President, while other Judges are appointed by the President after consultation with the Public Service Commission having the Chief Justice sitting as Chairperson. Whilst the 1979 Constitution made all judicial appointment by the President. A major change occurred in the current Constitution, with all appointments being subject to recommendations only. It provides that the President appoints the CJ, Judges and Masters from persons nominated by the Constitutional Appointments Authority. Something that brought about major transparency in judicial appointment.

Security of tenure

Another difference between the constitutions relates to security of tenure. The Independence Constitution 1976 provided that Judges will vacate their offices upon attaining 62 years of age, while the 1979 Constitution provided that the Chief Justice will vacate the office on attaining 62 years of age, while other Judges will vacate on attaining 15 years as a Judge or 62 years of age, whichever comes sooner.

The current Constitution provides that a Judge shall hold office until attainment of 70 years of age, removal from office, resignation or death, whichever comes sooner. As can be seen, security of tenure regarding age of retirement has improved under the current Constitution. Again a major shift in the right direction, creating more spaces for judicial experience, whilst assisting judicial independence.

However, all 3 constitutions provided that a Judge's position cannot be abolished while such Judge holds office. Moreover, the removal of judges from office has also throughout remained subject to an investigation by a panel consisting of

independent judicial officers. Protection of emoluments and prohibitions from their disadvantageous alterations are also a common theme across all the eras.

Constitutional Jurisdiction

A very specific new trait of our current constitution is the granting of the additional powers to hear constitutional review petitions to the Supreme Court, where it has to be presided by more than two Judges. Under the 1979 Constitution matters of fundamental rights were not enforceable. Under the 1976 Constitution, even though Chapter III provided for a charter of political and civil fundamental rights, no specific court is given jurisdiction with respect to their enforcement.

To note, the appointment of Master of the Supreme Court is also a new feature.

It is to be noted also that though specific administrative law jurisdiction is provided for in the current constitution, this was not denied in the previous one; this being an inherent power of the High Court of England which had existed since the 1903 Order In Council.

CONCLUSION

Long before independence was contemplated for Seychelles, the British, in 1959, appointed a Seychellois, namely Sir France Bonnetard, to the post of Chief Justice. This was again repeated in 1969 when Sir Georges Souyave was appointed Chief Justice, which post he held right up until the independence of Seychelles. However, things did not fare better following our independence and the lack of trust in our own nationals to be our own judges was a recurrent theme, with Renaud J being appointed in 2004, that is 28 years following our independence.

In an address delivered by Mr Philippe Boullé, Attorney-at-Law and senior counsel of our Bar at the conference ‘*Understanding Legacies*’ at the National Institute of Education on Saturday 22nd March 2003, he stated the following, “*For many years now, the posts of judges and magistrates have been filled entirely by persons of foreign nationalities and in the most part, with little knowledge of our political, economic and cultural traditions, or even of our complex legal system.*

Furthermore, foreign judges are unable to gather any measure of experience to share with, and pass onto others in view of the contractual nature of their appointment. Those who follow legal development will realize that while

Seychellois aspired to become Judges even before independence, today it is the Judges who aspire to be Seychellois”.

He unfortunately could not make it to this meeting, but I am sure that if he was here he would have acknowledged that things have changed in the past ten years. The aspirations of Seychellois to be judges of the Supreme Court has been fulfilled. We are now all 9 Seychellois Judges of the Supreme Court. The localization of the Supreme Court is perhaps one of the greatest achievements of under our new constitution.

As to current constraints, I will mention two. The existing constitutional mechanism for judicial appointment does include the heads of the two courts, and a Judicial Service Commission is being suggested. Some feel that there is a need for such a mechanism not only to ensure greater efficiency in judicial appointment but also to allow the issues such as emoluments; terms and conditions of appointment and disciplining to be dealt with in an independent and more autonomous manner. The 1976 constitution as we have seen had a precursor of this institution when it came to judicial appointment.

Another peculiar aspect of our system that still exists is that of judges being ex-officio Justices of Appeal. This is a remnant of the sessional system of the Seychelles Court of Appeal, when judges were appointed ad-hoc in order to meet the shortfalls of the day in the benches of the Court of Appeal caused by unavailability of non-Seychellois Justices for the sessions, which mostly came from abroad. With the increased in the pool of Justices of Appeal with the latest amendments to the *Courts Act*, it might be that the time has come to completely sever the ties between the two courts and establish a total separation.

These are but a few important and anecdotal issues that I have found and I am sure that you may have much more. Any suggestions that will go towards perfecting the system would be much appreciated. In the meantime we shall keep taking stock of the Court’s operating systems, identifying strengths and weaknesses, filling in the gaps, remedying weaknesses, correcting failings, as well as finding ways and means to consolidate and build on the Court’s achievements over the past 120 years. In other words, our task entails a projection into the future; the building of the Supreme Court that will stand the test of the next 120 years.

I have the matchless honor of being the current head of this venerable institution, the Supreme Court of Seychelles. From what I have found it is indeed the oldest democratic institution in this country. It has survived different forms of

Governments and Constitutions. Our Executive changed in many forms from Governors to Prime Minister and to President over the last 120 years. The same for our Legislature, from Legislative Councils to Legislative Assemblies to the now National Assembly. The Supreme Court has however remained inherently the same, though politics of the times had had certain impacts. I consider it incumbent upon me to continue striving to maintain the good traditions, norms and values of this old institution. I am also conscious of the fact that the world is in a constant state of change. Our task is to ensure that the Court keeps pace with this change in order to continue to discharge its constitutional mandate and remain relevant.

I thank you all for your patience as I took you on this historical journey. Permit me, once again, to welcome you to this celebration of 30 years of our constitution 120 Years of the Supreme Court of Seychelles.

Rony James Govinden, J.

Chief Justice