



**CHIEF JUSTICE RONY J. GOVINDEN'S SPEECH FOR THE OCCASION
OF THE RE-OPENING OF THE SUPREME COURT, 2022**

THEME: "THE JUDICIARY - EMBRACING CHANGE"

Introduction

President of the Republic Mr. Wavel Ramkalawan

First Lady Mrs. Linda Ramkalawan

Vice President Mr Ahmed Afif

Speaker of the National Assembly Mr. Roger Mancienne

President of the Court of Appeal Justice Anthony Fernando

Minister for Internal Affairs Mr. Errol Fonseka

Commissioner of Police Mr. Ted Barbe

Attorney General Mr. Frank Ally

Justices of the Court of Appeal

Judges of the Supreme Court, Magistrates

Chairman of the Constitutional Appointments Authority Mr. Michel Felix

Head of Prisons Mr. Raymond St. Ange

Government officials

Members of the diplomatic corps

Members of the Bar Association

Reverends, Fathers, Bishops and various religious representatives

Judiciary staff

People of Seychelles

Today we mark the occasion of the re-opening of the Supreme Court for the year 2022. Similar to last year, we are having a soft opening given the prevailing public health situation in the country. Though it is a low key event we appreciate the fact that it is being broadcast live via the internet. Our aim is to ensure that we, being the third pillar of our democracy, remain relevant and a jour in the hearts and minds of our people, and that they have a grasp of what we do.

As the Chief Justice, I get the honour and privilege to address the people of Seychelles once a year during the re-opening of the Supreme Court. It is an opportunity for me to share our successes; our challenges; the way we intend to move forward this year; and to share our perspective on some issues that have been in the public domain regarding the Court.

Today, and for the first time I make my speech in Creole, our “lingua franca”. I do this to embrace our lingua franca and reach deep into the hearts of all of you. An English version of this speech will be placed on the court record.

Reminder of our oath

When we assumed office as Judges, we took an oath and we swore that we will well and truly serve the Republic of Seychelles, we will do right in accordance with the Constitution and laws of Seychelles, without fear, favour, affection or ill-will.

I will take this opportunity to remind ourselves of certain constitutional principles that we Judges should hold sacred as a result of taking this oath of office.

First and foremost we are here to **serve the Republic of Seychelles**. This means that we are here to serve and not to be served. We are servants of the Republic and its people. We are not the Masters of the people. Serving your country means doing something that contributes to the wellbeing of the nation and its people. This means we have an obligation to deliver on our duties effectively and in a timely manner. The people of this country have a right to ensure that this happens by holding us accountable. Whenever we put on our mantle and mount the bench, we

should remind ourselves that we are in service. This will not only bring humility, but will serve to culture good judicial temperaments.

Secondly, we have to **do right in accordance with the Constitution of Seychelles**. We have an obligation to uphold the Constitution. It protects all and it sets limits to what can and cannot be done in our democratic society. The Constitution has awarded us the sacred role to safeguard its principles, the Charter of Rights and the laws of our country. From this, we have a duty to ensure that the law is upheld before all of our judicial forums, from the smallest of our tribunals to the highest of our courts. Judges do not make law. We apply the law. And above all when we act it is in accordance with the Constitution of Seychelles. Thirdly, our oaths oblige us not to show **affection or favour**. This stems from Article 119 of the Constitution, which provides that the Judiciary shall be independent and be subject only to the Constitution and other laws of Seychelles. As the head of the Judiciary, I have a duty to ensure that this constitutional principle is maintained. Independence means making decisions free from influence, irrespective of the source of that influence. As Judges, we have to base our decisions solely on the facts of the cases as presented to us in court. Our inclinations and outlooks are not relevant for this purpose.

Fourthly, we have to act **without fear**. We should have judicial courage. The brave judge applies conscientiously the law of the land as he or she understands it, with the guidance of the constitution, and importantly, without fear. The brave judge has no regard for the decision's popularity with his or her colleagues or the public at large. Judges must take a stand, even when they know the result will be unpopular. This is courage and a virtue each of us must remain with as we serve the Republic of Seychelles and its people. There are instances where the Judiciary is called to intervene against laws or actions that are not in line with the Constitution. We answer this call to intervene with courage. The same courage is necessary to uphold all rights envisaged in the Seychellois Charter of Fundamental Human Rights and Freedoms, and in some instances, the reasonable limits of those rights in a democratic society.

Finally, we should act without **ill will**. Our action should not be malicious or capricious. Revenge and taking an eye for an eye is a notion that should never cross our minds, as it is not part of our justice system.

I am conscious of the challenges that that our oath imposes on us. We live in a small island state. It is a fact that the person that you are going to judge is many

times a friend, an acquaintance, a friend of a friend, or a member of the family. Fortunately, we have a mechanism for recusal in our justice system. This means a Judge can remove themselves from a case or they can be asked to do so to avoid moral and personal dilemmas, and most importantly, maintain the confidence in the Judiciary. As Judges, we are also guided by our Code of Conduct, which each of us hold sacred.

The media and the Judiciary

The Constitution of Seychelles guarantees the freedom of expression as an enforceable human right. This extends to our press, the freedom to report and write in print or broadcast matters of public interest. This freedom is one of the bedrocks of our constitutional democracy. Journalists have free access to the courts. In order to ensure that this is done in an orderly manner, I issued a Practice Direction last year. This Practice Direction allows journalists on our premises to take video and audio recordings, and interview persons involved in cases outside the court rooms. They can also use any devices including their phones to do that. However, if there is to be any recording inside the court during the sessions this has to be done with the consent of the presiding officer.

We believe that for a free press and a meaningful enjoyment of freedom of expression, access to courts is pertinent and must not be unreasonably hindered. If the public can come down and hear a case without restrictions, so can a journalist who will later transmit the news to members of the public. In other words the media becomes the eyes and ears of those members of the public who could not come to court on that said day. By broadcasting news items of public and national interest from the Palais De Justice, the media are therefore fulfilling the peoples' right of access to an open and public judicial system.

The second role that the free media would play is that they become the mouth piece for judicial decisions. Most of the time the people would not read our websites or read our law reports to find out what are our decisions are. When the free press publishes our determinations, it helps the Judiciary with public awareness especially around human rights and freedoms. We therefore feel that the media is a very important partner for us.

However, there are limitations to freedom of expression.

Our laws and rules provide that the doors of our courts are open for any person to come in and listen to any case. But, there are instances where a judge in a case

would order that the case be heard behind closed doors. We call these, ‘exceptional cases’, although these are rare. When a judge decides to hear a case behind closed doors, he or she must give written reasons as to why the case is being heard in private. These reasons are also published. I am concerned that the media may not be living up to its responsibilities. I have noticed how the broadcast and publication of criminal proceedings are overly edited for no legal reasons.

The following hypothetical scenario illustrates the point on over editing: Six inquisitive persons went to the Supreme Court yesterday. They watch over a remand proceeding, and went home. They knew exactly what had happened in the case including the decisions of the court, the identity of the accused, the identity of the judge and that of the counsels involved. These same individuals sit in front of their TV’s in order to watch the 8pm news. A news item covers the very same remand proceeding that they had gone to watch, however it censured the identification and the images of the suspect. How would those members of the public react when this is done by a public broadcaster that has a constitutional obligation as an independent public broadcaster to ensure that the citizens of this country are made aware of things that affect or is affecting their lives? Obviously they would have negative reactions, which to my mind are genuine. The questions they asked themselves are, what’s the secrecy in this proceeding? What are they trying to hide? To their mind, they saw and heard everything that is of public record. The question that arises is, can the media turn something that is legally inherently constitutionally public into something private through such self-inflicted censorship?

I can assume three reasons the media may have to justify the self-inflicted censorship.

The first is defamation. There is an assumption that the publication of the pre-trial news item will expose them to a suit in defamation. However, this cannot be the case. It is not defamation if it is the truth or factual.

The second reason for self-inflicted censorship that comes to mind is the right to privacy. However this cannot be the case because court proceedings are inherently public and not private.

The third and final reason may be attributed to what the laws of Seychelles provide for around judicial proceedings. Our laws prohibits the making of any speech or writing on an ongoing judicial proceeding. The purpose of this is to guard against prejudice against a party to the proceedings. However, this applies to intentional

misrepresentation of court proceedings with intent to prejudice a case and we all know that most of these news items are factual and cannot fall within reach of this provision.

My personal view is that if the criminal proceedings are public, it is the duty of the media to make it public, and that includes giving the names and showing the uncensored images of the person involved. However, the media must also be accurate in their reporting, presenting things as they are on court records, without giving an opinion on the strengths or merits of the case. In the same breath they should also relate to the final decision in the case accurately. If the suspect is charged after he is remanded, they should say so; if he is not charged they should also report that he has been charged. If the very same accused is convicted, the conviction should be reported upon. The same should be done if he or she is acquitted, the reasons for the acquittal has to be given. All these being necessary in order to be accurate and fair to all parties.

I have gone to great length to talk about the media and free press because not only do I believe that it is a bedrock of our democracy, but also to correct the misconceptions that our justice system is 'private' I feel that the self-censorship of the media on the identification of accused and suspects is giving the wrong impression of our justice system as beings private and not public. This builds into conspiracies which are not conducive towards the Rule of Law.

The justice system of Seychelles is public, and does not condone or require censor unless the circumstances of a case dictate for privacy. I implore the press, our free press, to cogitate on self-censorship and their pertinent role in our democratic society. I want my intervention to be but a guide and should be seen as increasing the scope of the freedom of expression rather than diminishing it.

The Judiciary is seeing some encouraging signs in this regard and it is hoped that the move to greater transparency continues.

Corruption and drug trafficking.

Drug Trafficking and related offences, and to some extent Official Corruption and related offences, are increasingly becoming the main criminal cases being filed before the Supreme Court. As an impartial and an independent institution we are

obliged to ensure that those cases are given a fair hearing within a reasonable time. We respect the constitutional rights of the suspects and accused in all those criminal prosecutions. The rights include the right to be presumed innocent until proven guilty. However, if the evidence adduced proves beyond a reasonable doubts that they are guilty, we should convict them without hesitation, to the full extent of the law. Furthermore, following convictions, if the facts of the case shows that the offences committed are serious and that there are no mitigatory circumstances we should impose the penalties that deserves the crime, including the maximum sentences for the most serious offences. In so doing we will be acting without fear or favour and upholding the Constitution and the law, which is the first of our national duties.

Some of our achievements this year

The exterior façade of the Palais des Justice, as you should have noticed, is now brand new. The work is still undergoing at the back of the building and it is supposed to be completed this month. We are also about to undertake the interior redecoration of the building, which is to start soon.

Our cashier services have started to accept online payments for settlements of all debts that were formerly only made by cash payments..

The Magistrates Courts have been equipped with their own state of the art recording system and video link system with the remand center.

On 17 June 2021, the Judiciary commemorated Constitution Day by hosting a Roundtable Discussion with several stakeholders on the right to a fair hearing during the Covid-19 Pandemic. The panellists included Judges of the Supreme Court, Justices of Appeal and lawyers. The theme, *‘the right to a fair hearing during the COVID-19 pandemic’*, was aimed at discussing and interacting with the law while looking at ways to tackle the current limitations experienced in courts due to current public health restrictions. We intend to commemorate this event in the same manner each year.

Justice Mathilda Twomey received the distinguished Franco-German human rights award in July 2021 in recognition of her efforts in defending victims of sexual abuse, especially minors. The Franco-German human rights award was jointly launched in 2016 by foreign ministers in Germany and France. It recognises figures who have

distinguished themselves in the defence and promotion of human rights and the rule of law. Our congratulations go to Justice Twomey.

To celebrate World Press Freedom Day the Judiciary held a workshop on Monday 3 May 2021. We held the workshop in order to train journalists about the judicial process and how to efficiently report on court cases and judgements. The workshop was attended by the four main media houses. We unveiled our new Media Practice Directions on the same day. The document acts as a guide as to how the media interacts with the Judiciary, and includes a Glossary of legal terms with their Creole equivalent.

At the end the last judicial year we managed to host a Judicial Officers workshop on stress management and mental health. The workshop was well attended and given the importance of these subjects on our service delivery we intend to hold these kinds of events more regularly.

Last year we admitted four State Counsels from the Attorney General's Office and four from the private sector as Attorneys following the completion of their pupillage. On the other hand nine law graduates sat for their Bar Exam in 2021. The examinations were administered from 29 November 2021 to 10 December 2021.

“For Peace, Cultivate Justice” and “The Judiciary, Embracing Change”

The Judiciary has this year strived to ensure that we live up to our theme of cultivating justice with the ultimate aim of ensuring that peace prevails. The peaceful atmosphere in our corridors has been palpable. Our theme for the new judicial year would be *“The Judiciary: Embracing change”*. The change that we want to happen has been clearly set out in our Vision 2021-2025 Strategic Plan . This change would be along the following pillars;

Individual and Institutional integrity

The judicial environment must be one which enables the individual judge and the judicial institution to be independent, impartial and accountable. To act without fear or favour does not exist in a vacuum. It is dependent on the personal attributes of a judge and the ability of appointment processes to identify these traits. However, judicial integrity and legal expertise are not sufficient unless adequate safeguards, whether constitutional or legal, are in place. Administrative efficiency,

public confidence, financial resources and suitable facilities and infrastructure determine the ability of the Judiciary to discharge its constitutional mandate.

This year we would be working with one of our key partners, the Constitutional Appointment Authority, to see how can we reform in this sector with a view to strengthening judicial integrity.

Financial Autonomy

Under resourcing of judiciaries due to national resource constraints is common to many countries. However a judiciary requires adequate financial resources and administrative independence in order to deliver justice. The assurance of adequate budgetary resources and administrative autonomy over the use of judicial funds are therefore necessary elements for the promotion of judicial independence and efficacy.

This control over judicial funds may allow other branches of government to exert indirect influence over the actions of the Judiciary, thereby reducing its independence. How the judiciary is resourced involves a wide range of internal and external processes, including the formulation of the judicial budget, the national budget making processes, how allocated resources are utilised and the extent to which the executive may force a judiciary to reduce or allocate its budget. Moving towards greater judicial financial autonomy involves directly confronting the requirements—and, in many cases, the limitations—of existing government financial management systems. In some instances reform is necessary, in others judiciaries need to learn to work more effectively within the constraints of their government’s budget rules and procedures. The budget needs of the judiciary are also often discussed within a highly politicized context in which there are many other worthy and competing demands for public expenditure. However, whilst there may be reasons for budgetary constraints imposed by the Executive Branch, the judiciary must not be treated like a department of state but as the third arm of the state. Limitations imposed on resources allocated to the Judiciary severely undermine the rule of law and access to justice.

We have started discussing with our partners on this subject, in the coming year we intend to continue meaningful engagement with the Executive to encourage and ensure that Government complies with the “Paris Principles” in its funding of the Judiciary. The Paris Principles (“Principles Relating to the Status of National Human Rights Institutions”) developed by the United Nations, set out the international minimum standards that all National Human Rights Institutions

(NHRIs) regardless of size or structure must meet if they are to be legitimate, credible and effective in promoting and protecting human rights. The Judiciary is recognized as one of the major NHRIs in every country.

Continuing Legal Education for Judicial Officers

It has been a long held tradition that Judges are learned in law and hence there arises no need for further education. However, this has been found to be a myth and we need to embrace change in this area also this year.

Judicial education plays an important role in enhancing the professionalism of the Judiciary and promoting the rule of law. Legal education of judges and lawyers should include case studies, practical and methodical training, skills needed to organize one's work effectively (such as principles of docket and case management), and social skills.

Under Vision 2025, Legal Education Programmes developed by the Judicial College of Seychelles (JUCOS) will see the adoption of a variety of educational programmes and techniques in order to maximize effectiveness and reach all the stakeholders. These include in-person programmes, self-taught programmes, and interactive programmes supported by adequate technological equipment.

Special attention will also be given to the activation of educational programmes for Judges and court staff intended to promote organizational and technological modernization of courts.

Court Personnel

Judicial integrity and capacity do not emerge in isolation. They are qualifications that are refined over time in the institutional frameworks of courts of law and the agencies with which courts interact. Through their interactions with other actors in the processes of administration of justice—litigants, advocates, witnesses, prosecutors, and court personnel—judges build and strengthen these qualifications. Those with whom they interact most closely on a day-to-day basis are the court employees who support them in their work.

Although Judges oversee and direct the activities of court support staff, they also are influenced by them in the course of their daily interactions and develop ongoing working relationships with them. From an institutional perspective, it is important that the Judiciary of Seychelles devotes attention and resources to these

court employees to ensure that the support they provide to Judges is maximized in terms of both quality and quantity. Equally important, care must be taken to ensure that the working relationships on the basis of which such support is provided are strong, positively-oriented, and built on mutual trust and confidence.

In this regard, professional trainings and the development of court personnel is an important component of Vision 2025 and this will be supported this year. Well-trained court personnel create the realization—and the perception among court users—of judicial integrity and transparency of court operations. The benefits of a capacitated and appreciated staff include improved trust in the court system through improved customer service and transparency, procedural efficiency and court management, which are directly tied to the competence of court personnel. It also reduces incidences of unethical and unprofessional behaviour, by increasing professionalism and creating competencies in other areas. Trainings have an effect beyond court personnel's core tasks, thereby raising the court's capacity and flexibility.

In order to enhance the impact of training programmes for court support staff the Judiciary will conduct a training needs assessment and analysis of the functional infrastructure of the courts and tribunals and their operational practices, in order to determine what improvements and changes, including any training, are needed. Court personnel represent the glue that holds the justice system together, and are critical in their interactions between the Judiciary and the rest of the actors in the justice system.

Embracing Technology

Internet and Computer Technology offers the Judiciary multiple chances to reconfigure and improve its operations and key judicial values such as transparency, accountability, timelines, access to justice and information. We will seek to explore the use of cost effective technologies to realise it in our core Constitutional objective.

The Covid-19 pandemic presented several challenges and difficulties in the running of the Courts, but this also presented an opportunity to embrace technology through virtual hearings and the establishment of fully functional e-Courts in future. The Judiciary recognizes that it is imperative to embrace technological changes, and the preparatory work must be done now, including

putting together a legislative framework that ushers in the e-Court system. This year will see continuing efforts in this area.

Improved Judicial Information Management.

Judicial information management entails also the publication of judgments through law reports and via the Internet. We need to embrace changes that technology is bringing about in legal and judicial publications as they play an important role in the functioning of the justice system. It is vital to proper case management and the development of jurisprudence that judicial officers should have ready access to judgments either in physical or electronic form. This year, we will continue to invest in judicial information management through our Library to ensure that the Judiciary is a resource and centre of excellence for domestic, regional and international legal materials.

Transparency, Access, Outreach and Education

As it would appear from what I have said previously, the Judiciary is a champion of the right of access to the court process. The public and the media can attend court proceedings without hindrance. Equally important is providing the public with ready access to court documents, especially judgments and other decisions, as well as court-related administrative information, such as data on the Judiciary's caseloads and clearance rates, collection of court fees, and the use of budgetary allocations.

The Judiciary of Seychelles recognizes, however, that transparency involves more than simply providing access to court proceedings and information. To achieve transparency, information must also be disseminated in a format that is easily accessible for the intended audience—especially for journalists and court users who do not have a legal background and may often have limited literacy. Publicizing information about court operations and judicial efforts to increase the efficiency and quality of justice also has beneficial effects on public trust in the Judiciary. Judicial outreach and education concerning court services and procedures are useful from the perspective of both the Judiciary and the court users. They help to actively engage a court in a relationship with the community and to demystify many of the complexities surrounding the operation of a legal system and the conduct of court proceedings. By educating and involving the public in the court's work through proactive judicial outreach and communication strategies, courts can increase public confidence and strengthen respect for the rule of law in their communities.

Accordingly, we need to continue to embrace the culture of transparency through enhanced access to judicial information, and more frequent engagements with the public and other stakeholders.

An Accountable Legal Profession.

The oversight and discipline of the legal profession falls under the Supreme Court. The Judiciary is concerned with the increasing number of complaints, and the inadequacy of the legal framework governing legal practitioners. Lawyers have the potential to promote or inhibit access to justice, and the system must be founded on strong ethics, integrity and accountability. In embracing changes in this area, we will prioritise a multi-stakeholder review of the present processes and laws, in consultation with the legal profession and the Office of the Attorney-General so as to bring about reforms in the Legal Practitioner's Act and the introduction of a Seychelles Bar Council Act.

Statistics

Court performance is measured by considering two aspects. The first is the overall case disposal, and the second is the percentage that older cases (backlog) form part of the total cases. 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.

The 2020-21 statistics show that the Courts made progress in reducing some of the backlog. At the same time COVID-19 affected the disposal of cases where the courts had to shut down following public health measures. Similarly, cases filed decreased in 2021 in comparison to previous years.

We remain committed to reducing the backlog. I invite each of you to visit our website and access our Annual Report which has these statistics in greater detail.

Intake and exit

This year we have been successful in replenishing all the vacancies in the Judiciary. Our judicial staff increased with the appointment of a Magistrate, two puisne Judges and the Master of the Supreme Court in 2021. Early this year, we are in the process

of recruiting a Magistrate for the outstanding post left vacant, following the elevation of the Master from the Magistracy to the Supreme Court.

At the Senior Management level, following the resignation of the Director of Logistics and operation, we had to recruit a new post holder, who joined the team in September 2021.

In our Legal Research department, there was an appointment of a new Director of Legal Affairs; Senior Legal Researcher and three Legal Researchers.

I have noticed that in certain sections, the rate of staff turnover is relatively high, which leads to experienced staff leaving those departments. We need to put into place strategies that will ensure greater retention of staff in such sections as court interpreters and drivers/messengers.

Closing remarks and vote of thanks

I thank all those who have diligently and dutifully carried out their duties in the year 2021 striving to fulfill the theme, “For Peace, Cultivate Justice”. Now as we move forward in this year, let us embrace positive changes in all sectors of our services that would be made with the sole aim of rendering our constitutional mandate more effective and more consumer friendly.

To the Head of State,, His Excellency President Ramkalawan, thank you for having graced us with your presence. If I am not mistaken this is the first time that a President has attended the opening of the Supreme Court. Your presence here no doubt serves to showcase the importance that you attach to the Judiciary and our democracy. The same vote of thanks goes to the Honourable Speaker of the National Assembly, whose presence with us is just as historical. On behalf of my colleagues I extend our guarantee that we will remain the guardians of our Constitution.

To my colleague Justices, Judges, Magistrates, Chairpersons and members of tribunals, thank you for your hard work in these trying circumstances. This year we need to be even more imaginative and adaptable 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 partners in the administration of justice - the Honourable Attorney General and members of his office, the Commissioner of Police and members of the Police Force, the members of the Bar, the Superintendent of Prisons and members of the Prison Services, the Probation Services, the Social Services, amongst so many others too numerous to mention - we want to tell you that we cherish your partnership, and we are grateful for your dedication to the ethics and codes of your professions.

A special thank you goes to the SBC, which has managed to bring this event live to our homes and work places . I wish also to thank Judge Pillay and her team in making this ceremony the special one that it has become.

Lastly, I want to thank the biggest of our court users, the people of Seychelles. Last year was especially challenging, given the fact that we had to either stop our services, or restrict them because of the public health situation prevailing in our country. This has affected our service delivery. I know however that this will never knock us out. We are a resilient people, put your mask, keep your distance, take your vaccination and protect yourself . I am confident that we will overcome this challenge like we have overcome many others in our history.

I wish you all a good and prosperous 2022 judicial year, may God bless the Republic and peoples of Seychelles.

Thank you

R J Govinden

Chief Justice

10/1/22

