

Transforming Challenges into Opportunities

Address by the

Acting Chief Justice Durai Karunakaran

at the

Re-Opening of the Supreme Court of Seychelles

On 15th September 2014

Former Chief Justice of Seychelles Hon. Mr. Justice Ranjan Perera,

His Lordship Justice Francis MacGregor, President of the Court of Appeal,

Honourable Mr. Justice Fernando from the Court of Appeal,

My noble colleagues, the Judges of the Supreme Court,

Honourable Attorney General Mr. Govinden and members of his legal
team,

Worships, the Magistrates,

Reverend Bishops,

Learned members of the Legal Profession,

Excellencies The High Commissioners and members of the diplomatic
corps,

Invited Guests, Ladies and Gentlemen,

Good morning to everyone. It is a matter of great pleasure and privilege for me to welcome you all to the Palais De Justice. Thank you very much for your esteemed presence on this auspicious occasion.

A Legacy preserved

Ladies and Gentlemen, today I have the honour and rare privilege of addressing you on this ceremonial Re-Opening of the Supreme Court. This annual event is a part of the British Legacy, we have inherited ever since the Seychelles became a Crown Colony in 1903. It marks the beginning of a New Judicial Year. It occupies the center stage of our Judicial Calendar. It serves as a proud reminder of our rich judicial heritage. We, as trustees shall continue to preserve this legacy and pass it on to our next generation.

A Tradition revised

It is an established tradition that Chief Justices of the past have used this occasion, primarily to announce the annual statistics on civil and criminal case loads, pending cases, backlogs, disposal rates, etc. relevant to the preceding judicial year. No doubt, it is a good tradition. It renders the Judiciary transparent and accountable to the people of Seychelles. However, this tradition of announcing statistics in the Chief Justice's annual speech now appears to be outdated. It needs to be done away with, unless circumstances in future, dictate otherwise and I propose this change for the following reason:

This good tradition has now become redundant. It is no longer relevant today. Since 2011 we have embraced a new digital tradition of publishing a detailed "Annual Report" containing all these statistics and details. This regular "Annual Report" is available online to any member of the public, from anywhere and at any time on our website - SeyLII.org. I am proud to say that this is one of the fruits we realized

from the implementation of our First Five Year Strategic Plan 2010-2014.

The goals set

The former Chief Justice His Lordship Fredrick Egonda-Ntende, who has been delivering these addresses for the past five years, completed his service with the Judiciary of Seychelles last month. He has now returned to assume his judicial office as a Justice of the Court of Appeal in his home country Uganda. His tenure here *has clearly demonstrated that we have the capacity to change, and that our work here has the potential to attract both local and international acclaim.*

The theme of this year's re-opening is "Transforming Challenges into Opportunities". The challenges facing the Judiciary of Seychelles have been clearly articulated by the former Chief Justice in his previous years' addresses. There is no doubt that each transition presents its own set of challenges - challenges that we must now strive to transform into opportunities. All opportunities should be aimed for the continued progress towards our ultimate goals. But, then what are these goals?

They are:

- *To effectively meet our constitutional obligations;*
- *To administer justice and keep the path to justice clear of all and any obstructions*
- *To fulfil the legitimate expectations of the public and our nation;*
- *To play our vital role in strengthening and institutionalising democracy, and promoting the rule of law and good governance.*
- *To be a guardian of the Constitution and maintain its Supremacy and keep its basic structure intact at all costs;*

- *To protect the fundamental human rights and freedoms of the people;*
- *To maintain the dynamic equilibrium between the three branches of the government through proper “checks and balances”*
- *To respect and maintain the independence of each branch and the separation of powers amongst the three branches of the government; and*
- *To maintain and ensure that the ultimate Sovereignty belongs to and vests in the “People of Seychelles”.*

To achieve these laudable goals, we need our partners including the other two branches of Government, the Bar Association, Civil Societies, and the NGOs to play their part. It is paramount to ensure that everyone comes together in unity and that the fundamental principles underlying our Democratic Constitution govern and guide us in preserving the basic structure of our Constitution and in the administration of justice.

A New Beginning

Ladies and gentlemen, as we unite to create a New Seychelles, we deserve a rejuvenated Judiciary. Having recorded remarkable progress on many fronts, following the successful implementation of the first Strategic Plan 2010 - 2014, we have now set sail for the next level of reform, growth and development. Now, the Judiciary has acquired the wherewithal and necessary capacity, infrastructure, technology and the potential to synergize and continue our journey to transform the Seychelles Judiciary as a **Centre of Judicial Excellence** in our region. Excellence is not an act but a habit, which never ends. Attaining excellence is a constant and never ending process. With the unity, strength, and dedication of the

administration, support staff and noble Judicial Officers ranging from the Magistracy to the Court of Appeal, the Judiciary is now set and ready to meet the changing and challenging needs of time and society. It has now taken shape with roots that give it, a stronghold on ground realities and wings that give it, the ability to reach new heights.

Reaffirming our Commitment

We have now come together to reaffirm our judicial oath and to reassure our commitment to the Constitution; to the rule of law; to democracy: and above all to renew our implied promise to the people of Seychelles that your Judiciary is and shall continue to be an independent, impartial, strong, effective, efficient and accountable branch of the government. We shall steer the law towards the administration of Justice and Fairness. The Judiciary will thus, continue to play its role as a watch-dog of the Constitution and safeguard the rights and freedoms of each and every Seychellois, guaranteed by the **SEYCHELLOIS CHARTER OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS** and render justice for all. However, Freedom is not free. You and I are free today because some people have paid the price at some point in time, and have sacrificed their lives and freedoms so as to gain freedom for us. Freedom is an indivisible word. If we want to enjoy it and protect it, we must be prepared to extend it to everyone, whether they are rich or poor, whether they agree with us or not; whatever be their racial, sexual, cultural, political, and religious orientation. Justice is universal and one's birthright; a natural right and no one shall be denied or deprived of his or her rights without due process of law.

Constitutionalism and Interdependence

Constitutionalism has become the mantra of modern man in all emerging democratic societies. The provisions of our Constitution are not

mathematical formulas having their essence in their form. They are organic living institutions. The constitutionalism that grows in our own pluralist soil is vital, not formal. Living Institutions are always greater than individuals. This living institution vests each of the three branches of Government with the solemn responsibility to support one another for the welfare of the people and advancement of the nation. The Judiciary is constitutionally built to stand firmly independent of the executive or legislature. This is simply an institutional independence, which is at times, misperceived as individual independence. To some it appears that the executive and the judiciary are contrary to each other because of the independent nature of their respective constitutional obligations and functions. But this notion is completely wrong. As a matter of fact, they complement each other. The aim of both these institutions, and the legislature too, is to collectively achieve the common goal of common good for the common man. Then, it is perhaps more useful to identify not just a modern Judiciary, but a modern legislature and executive too, each an “interdependent” branch of the Government. No man is an island, and no judicial system can function effectively without close and constructive relationships with its partners and stakeholders, both within and beyond Government. In reality, no branch of the government can operate in isolation and independently of the other branches. Interdependence is the essence of all natural laws and determines the sustainable existence of everything in the universe. It is of a higher value and status than pure independence. To fail to appreciate the true interdependency of modern institutions and societies is to risk isolation, fragmentation, and ultimately self-destruction. The declarations contained in the Preamble of our Constitution provide the foundation for a healthy and flourishing interdependency, in which the whole of our society is greater than the sum of its parts. Mutual Respect, Cooperation and Interdependence are the cornerstones of a strong, stable, healthy and vibrant democracy.

The Fourth Estate

Undoubtedly, the media or Press plays a vital role in the administration of justice. The fourth estate plays its own critical role in furthering accountability and transparency using its constitutional tool, the freedom of expression. An independent and responsible media shines light on corruption, inefficiency, and abuse of rights, and provides invaluable information to the public about the functioning of the essential organs of the State. It reports reliably and accurately, which enhances its professionalism, credibility and trustworthiness. However, an *irresponsible* media may risk doing more harm than good, particularly in situations involving inaccurate or inappropriate, or even prejudicial coverage of pending judicial proceedings or infringing the privacy and rights of the institutions or individuals. In this regard I wish to congratulate the Seychelles Media for having adopted the code of conduct for journalists in Seychelles. It is a welcome development that complements our own recently adopted Codes of Conduct for the Bench and the Bar. Our Judiciary is transparent and prepared to play its part, both in providing timely and accurate information about Court operations, as we recognize and respect the freedom of expression, guaranteed by the Constitution. The Judiciary is not interested in bouquets or brickbats. But, it is far more interested and keen on upholding the majesty and dignity of our Courts; maintaining the unity, sensitivity and stability of the community. It therefore, cannot accept publications, which scandalize or tend to scandalize or tend to lower the authority of the Courts or interfere with the administration of justice in any manner. Freedom of the press is basically the freedom of individuals to express themselves, through a medium. It implies that this freedom is in no way superior to that of an individual. We would earnestly remind the Fourth Estate, which professes to be one of the main pillars of democracy, that “Freedom of Expression” is not a license to commit contempt or to infringe upon the rights of others or to breed hate speech. It would be admirable if the Forth Estate uses its power for constructive criticism promoting unity and social harmony.

Independence vis-à-vis Accountability

A modern Judiciary earns respect and esteem only through making itself accountable and transparent to the public. Accountability and independence can go hand in hand. We do recognize the right of the public to criticize constructively our performance, functioning and even judgments as an important feature of free speech. No doubt, the Judiciary is accountable as a public institution. In the last five years, we have shown our genuineness as to transparency. You have witnessed a sea-change in the level of transparency in the basic operations of our Courts. It is now incumbent on us to carry that momentum forward into our next Strategic Plan, which will span 2015 to 2019.

Achievements made during the life of the first Plan must be recognized, consolidated, and embedded in our practice as an organization. Incomplete projects must be identified and brought swiftly to conclusion. Then it will be time for expanding our vision further - to meeting new challenges and seizing new opportunities to reach new heights. The Judiciary remains and shall continue to remain open to respectful and constructive input from all stakeholders - just as our partners in governance remain open to respectful and constructive input from the Courts.

Criminal Justice System

I note that while the prisons continue to fill, persons who are acquitted at trial are often viewed by some, as going scot-free on 'legal technicalities'. The blame is often laid at the door of the Court House and the legal system. It is true, society is hurt when a criminal escapes punishment because of a "legal technicality", but in the long run, a democratic society is hurt still more, when lawless conduct by law enforcement agencies go unchecked. If the Republic does not discharge its evidential burden to prove the case to the required standard, the Courts cannot be expected to change its role and make up the difference. This also applies to civil cases, particularly in situations where attorneys are not adequately prepared to present their client's case.

One may have a good case, but unless the case is fully and properly presented to Court with admissible evidence, how would the Court be able to appreciate and decide on merit? Judges and Magistrates can be compassionate and flexible, within the law, but they cannot represent and conduct the case for the prosecution or for a party to the litigation. It is the duty of the legal professionals, the prosecutors especially in criminal cases and members of the law enforcement agencies, to give the Court all the information and adduce admissible evidence it needs, to deliver a just decision.

Judges and Magistrates

To quote Justice Kirby, in a pluralist society Judges are the essential equalisers. They serve no majority; nor any minority. Their duty is the law and to justice. In upholding law and justice judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected. So long as a judge keeps silent, his reputation for wisdom and impartiality remains unassailable, but every utterance which he makes in public, except in the course of the actual performance of his duties, must necessarily bring him within the focus of criticism.

The capacity of the Judiciary of Seychelles to deliver timely and effective justice has been strengthened this year by the arrival of a new Supreme Court Judge, His Lordship Mr. Justice Akiiki-Kiiza. We welcome Your Lordship to join our judicial family. We appreciate your dedicated service. We have also recently filled the important administrative post, the Registrar of the Supreme Court. Mrs. Juliana Esticot has been appointed to this post. Mr. Ranjana De Silva has been appointed as Financial Controller. On behalf of the Judiciary, I take this opportunity to welcome and wish them success in their respective assignments. While skilled human resourcing continues to pose a challenge - as it does for every public service organisation in Seychelles - we are working hard to transform this particular challenge into an opportunity, by providing in-service training

and professional development for existing staff, and actively supporting the young law school at the University of Seychelles, the cradle for our future Bar and Bench.

Magistrate Courts

I am encouraged by the remarkable progress at the Magistrates Court. I note an increasing number of cases that are progressively completed every month without inordinate judicial delays. However, a person accused of an offence must be given every opportunity and time to prepare and present his best defence, lest it be complained that *Justice hurried is justice buried*.

On Sentencing

It is a mistake to consider the objects of punishment as being punitive, deterrent or reformatory or preventive or nothing else. The ultimate justification of any punishment is not that it is deterrent but that it is an emphatic denunciation by the community of the crime. It is therefore, the duty of the Courts to show the public revulsion at the particular type of crime, by the punishment which is imposed. The punishment imposed for a crime should relate to the moral conscience of the community on whose behalf they are being inflicted. Unless the aims of the punishment take into account the sensitivity of the community, the penal system will not serve one of its primary functions, that is to maintain “communal stability”.

The prison

I wish to take this opportunity to pay particular tribute to the Prison Service of Seychelles. I can say on behalf of my colleagues, on the Bench that the recent improvements in the prison facilities and processes are noticeable and commendable. Any drastic rise in prison population shall

always pose a serious challenge to any country. Our prison service has risen to the challenge admirably. The Service will need the continuing support of every link in the law enforcement chain to ensure that it can continue to hold accused and convicted persons in decent and dignified conditions. The Judiciary is charged with upholding these basic constitutional guarantees. We will continue to monitor the situation closely, and provide whatever support we can.

Family Tribunal

Having gone through some of the appeals from the Family Tribunal, it is pertinent to mention here that in the determination of any question with respect to the upbringing of a child, the best interest and welfare of the child should be its primary consideration. Particularly in the early years of childhood, continuity of care and custody is the most important part of a child's sense of security. Hence, any disruption of established bonds, are to be avoided, wherever it is possible to do so.

Court Annexed Mediation Programme

Court Annexed Mediation Programme, which we designed and commenced, last year has started yielding fruits. I seek the continued support of the Bar and the litigant public to avail themselves of this Programme to save time, money and energy and become part of the solution to our backlog problem.

New Building for Magistrate Courts

Everybody in the Judiciary is anxiously waiting for the day when the Victoria Magistrates' Courts would be able to join us at Ile du Port, in a custom-built, Court complex. This has been planned to be built on the land adjacent to the Palais de Justice. We have already completed the planning stages for the proposed new building. All has been set to get the project off the ground. I am hopeful that the construction of the building

will start early next year, in 2015 and be completed by the end of 2016. I wish to express my sincere gratitude to the Government of Seychelles, particularly, to the Ministry of Finance for approving and financing this project. This would eventually, provide the necessary infrastructure for the next level of growth and development of the judiciary.

Supreme Court Annex

The Supreme Court Annex is being developed with the support of UNODC, the Governments of Great Britain and the Netherlands. It is a 2 court room structure intended to be devoted to maritime security issues. The construction work is in progress and nearing completion soon. Hopefully by February 2015, the building will be ready for occupation to accommodate two additional Court rooms for the Supreme Court to deal with maritime security related cases.

Family and Employment Tribunals to come within Judiciary

The Judiciary has a vision to have all Judicial Institutions, the superior courts, the subordinate courts and the tribunals located and all related services centralised within one precinct for the benefit of all. The concept of having a comprehensive **“Cité de Justice”** (Justice City) at Ile du Port has grown even stronger with the decision of the Government to bring both Tribunals, the Family Tribunal and the Employment Tribunal under the administrative umbrella of the Judiciary. This unification will bring greater support, coordination, and cooperation, with shared resources and opportunities for collegial engagement. However, this merger will not affect the independence of their respective functioning.

Thanks Giving and conclusion

I also express the gratitude of the Judiciary to the Reverend Bishops of the Catholic Church and the Anglican diocese and their staff, who arranged a wonderful service this morning at the Church. It is also my pleasant duty to record our sincere thanks to the SBC for their wide and complete

coverage of today's events and for helping us with filming and providing video links to the viewers at our auditorium free of cost. We also thank the National Brass Band and the Seychelles Police Force for having mounted an outstanding Guard of Honour.

I would like to take this opportunity to thank all our staff, Magistrates and Judges of the Judiciary who have worked hard in the past judicial year. I appreciate their hard work and dedication to our motto of 3Ds, namely, "Duty, Dignity and Discipline". I also thank all other players in the administration of Justice, including all members of the private bar and government bar lead by Hon. Attorney General, the Police Force, the Prisons service and the Social service. I call upon you to rededicate yourself this year for the continued service to our people. Service to Mankind Is Service to God!

Before I conclude, forgive me, for my inevitably, longwinded address. I thank you all for your kind indulgence. Best wishes to all my colleagues on the Bench! May God bless you all and the Seychelles Judiciary!