



JUDICIARY OF SEYCHELLES

Speech of the Chief Justice, Mathilda Twomey on the occasion of the Opening of the Supreme Court

10 January 2017

President of the Court of Appeal, Ministers, Attorney General, Judges and Master of the Supreme Court, Magistrates, Registrar, Secretaries of State, Commissioner of Police, Distinguished Members of the Diplomatic Corps, Bishops, Attorneys at law, members of staff of the Judiciary, Distinguished guests

Welcome to the Palais de Justice for this Opening of the Supreme Court. I trust that you had a restful festive season and I wish each and every one of you a peaceful and successful 2017.

Before I begin, I wish to say a few words about our dear friend, Sir James Mancham who passed away last Sunday. Sir James was a friend of mine, a member of the legal profession and a devotee to national reconciliation. He was an asset to Seychelles and an example to us all in his ability to make forgiveness look gracious and easy.

He was also an ardent fighter for human rights. He stood up to the Constitutional Commission insisting on the inclusion of a functional Bill of Rights complete with fully justiciable rights and of transitional provisions which would allow people to reclaim property acquired during the second Republic. His fingerprint on the legal system of Seychelles will not fade and for his contribution we are truly grateful.

Sir James had the following wisdom for us in 1997 which is no less relevant 20 years later:

“Paradise cannot be divided against itself. God did not give us this most beautiful of all countries for us to behave like cats and dogs conditioned by a ‘blue and red’ politics which has lost relevance in the world of today. Today, we must live on our own resources, not on polemics or slogans. Today, we must face the truth and not be manipulators of divisive propaganda. (Democratic Party Convention. November 1996. Seychelles Review – Dec 1996/Jan 1997)”.

As we continue to discuss the theme of Unity in Diversity later today, let us remember these words.

[Please stand and join me in a moment of silence in memory of Sir James Mancham, our brother in law and our father in reconciliation.]

Thank you.

For the second year, I am truly honoured to stand before such an auspicious crowd to give this opening address as the representative of the Judiciary. Thank you for joining us today for this time-honoured tradition. You are very welcome here.

Much has been made in the past year of the fact that I am a *female* Chief Justice, and the rows of portraits in my office daily remind me that I am the first. But these watching personages also remind me that I am one of the very few Seychellois to sit in my chair. I know that this inclusion of me despite my difference from my predecessors is a reflection of the deep shift that has taken place in Seychelles during my lifetime and I stand here knowing that my role as a female, Seychellois Judge is merely a small part of the larger Seychellois story. Indeed if we look around at our country today, we see that the top positions are no longer only held by a small and select group of power holders, but that opportunities are available to persons of all persuasions and from all backgrounds. I owe a debt to all of those who came before me who paved the way for this, and I am grateful that we live in a country where this is possible.

We have adopted a Constitution, which explicitly reminds us of the fact that we are descendants of different races who have learnt to live together. Furthermore, it acknowledges that the foundation for justice in our country is the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family. The diversity of our heritage, backgrounds, and opinions and our need to respect each other's dignity go hand in hand. Behind these complicated words and concepts runs the blood of many who fought to give meaning to these words – who fought for our independence and our unique democracy that allows all people, not least of all me, to take opportunities confidently.

This year's theme for the Judiciary, Unity in Diversity, acknowledges these principles adopted by “we the people” in our Constitution. This phrase has been discussed several times in the past months, and featured several times in the discourse of the new President, Mr. Faure and in the discussions about our National Assembly. Whilst I assure you we chose this theme months earlier, I am happy to share it without pretending to have ownership, in the hope that its message will permeate our minds and our actions. In order to unpack the content of the theme we need to look at what it means to acknowledge the dignity of another human?

It means to see a person as inherently valuable in and of themselves, regardless of what they do or who they are. It means to value the diversity that they bring to the table while respecting their uniqueness. Immanuel Kant refers to this as seeing people as an end in themselves and not a means to an end. The corollary of recognising the individual value in each and every person is that we are morally compelled to treat them as our equal – therefore, in the same way that we would want to be treated. In Christian parlance this is the maxim of loving your neighbour as you would love yourself. Expounding on this very basic principle, John Rawls, the philosopher, adopted this approach when discussing how we should resolve political issues. According to Rawls, the best way to decide how a political choice should be made would be for the lawmaker to imagine that they do not know what gender, race, abilities, tastes, wealth, or position in society they themselves will have. This ensures that they will pick the most just outcome rather than one that favours their own disposition.

Treating people as a means to an end is part of the earliest stage of our history when African slaves were brought to Seychelles and denied fairness, equality and dignity by virtue only of their position in society. This subjugation of one group of people by another continued in various forms through the generations as landowners or lawmakers used their positions to rule to the detriment of others. People who were different, or who held differing political or other views were treated as a means to an end. Actions taken by a privileged group of people against another were often allowed to run unchecked through the inaction of the Courts, and the legal system thus was complicit in denying such people their fundamental rights.

In 1993, we committed ourselves to changing this and in reforming our social structure, and as I said earlier, we can see a tremendous shift since then. The theme for this year calls on us to reaffirm our commitment to valuing the dignity of individual persons within the structure of the whole – we seek unity, not uniformity. We seek reconciliation, not retaliation. In 2017, by focusing on Unity in Diversity, we will consider how we measure up against this value in the cold light of reality. And I say to you today that we have some work to do.

2016 – Access to Justice for All

Before we focus on 2017, I would like to take a minute to consider 2016, a year during which we at the Judiciary focused on improving Access to Justice for all. This was not just a catch phrase for my speech, but rather an agitator for our efforts throughout the year. We wanted to focus on challenging conventions and practices and taking a fresh look at how we work and how we could ensure that each person in Seychelles could get into court and when at court, get justice, real justice within the rules of the law. This is, after all, our primary function as the court system.

To do this we needed to bulk up our capacity to dispense justice and we recruited a new magistrate, Ms. Jessica Kerr, whom we welcome. At the Supreme Court, we were joined by two new judges, Judge Melchior Vidot, formerly the Master of the Court and Judge Seegobin Nunkoo, who kindly joined us from Mauritius. We also recruited a new legal researcher to join the team at the Court of Appeal. Therefore, I'd like to thank Mr. Peter Mbithi for his efforts in the role and welcome Mrs. Situmbeko Masialeti who has replaced him. We also welcomed the Judiciary's first dedicated Public Relations and Communications Officer, Mrs. Anne Kautsky who joined us late in the year.

We also increased the number of physical locations for Magistrates courts in order to ease the burden on the prison system and our litigants and we re-opened the courtroom on La Digue and in Anse Royale. We have begun to use our video link facilities to increase our ability to hear certain preliminary hearings directly between the prisons and the courts without needing physically to move remandees and prisoners. We successfully trialled this during the Sentencing Review Tribunal which heard and decided on over 200 cases of persons sentenced under the provisions of the Misuse of Drugs Act which had subsequently been amended.

This Sentencing Review Tribunal was a highly successful example of multi-stakeholder cooperation in order to promote access to justice. The exercise, required by the amendments to the Misuse of Drugs Act,

was the first of its kind and extended the hand of the law to remedy draconian prison sentences, which had been passed according to the previous law. The exercise saw the judiciary working closely with Minister Bastienne, then the Minister for Internal Affairs; Mr. Govinden, the Attorney General; and Mr Tirant the Superintendent of Prisons and Mr. Liam Quinn of the National Drug Enforcement Agency. Judge Burhan and Senior Magistrate Pillay and Magistrate Kerr also willingly took on these extra duties despite their own busy schedules and I wish to thank each of them personally. As a result of the process, we now have guidelines for the sentencing of drug and drug related offences that account for nearly 75% of all criminal cases. These guidelines are being followed uniformly by all magistrates and judges.

Throughout the Sentencing Review Tribunal process, the judiciary staff within the criminal registry outdid themselves, going over and above their responsibilities to ensure that the hearings were held efficiently and effectively. Furthermore, Ms. Kerr was also keenly involved in providing training for lawyers, state counsel and prosecutors on the amendments to the Misuse of Drugs Act. I am proud of the proactive and professional approach taken by the members of the judiciary who were involved in the process and I applaud them for their initiative and hard work.

At the beginning of 2016, we discovered that there were unacceptable accumulations that had developed in the producing of court transcripts and the Registrar worked tirelessly with the court reporters to address this backlog and reform the way that we utilise our court reporters' skills. This has resulted in us being able to produce court transcripts in a speedy and efficient way.

In collaboration with the University of Seychelles, we reinstated compulsory continued legal training for judges, magistrates, and some specialised training for the staff. We will expand on this in 2017 to ensure that all in the judiciary feel enriched and well equipped for their roles. Part of encouraging academic work saw the Judiciary hosting the first Andre Sauzier writing competition and the winning papers are now available on Seylii. Moreover, the Unisey LLB students took part in the first ever Seychelles Moot Court competition held by UniSey in collaboration with Seylii and the Judiciary.

In 2016, the Judiciary heard the highest number of cases to date, reducing the backlog. Some of these cases included several logistically difficult and politically charged cases that put the judges and magistrates in tough ethical positions. I am proud of the way that the judicial officers held up under the pressure. The Magistrates Criminal Division completed 3300 cases in the year in comparison with 1800 the year before. They also disposed of 394 civil cases as compared to 314 the previous year. The Supreme Court Criminal Division completed 204 cases compared to 168 the year before. As already mentioned the Sentence Review Tribunal in addition completed 210 cases. The Supreme Court Civil and Constitutional Divisions completed 1152 cases compared to 1153 the year before. However, cases from these divisions faced delay due to the hearing of long and complicated cases such as the Charitas drug trafficking case and the Elections petitions. We also acknowledge delays due to the capacity of the Bar. In this respect we need to look at growing the Bar to increase the number of available Counsel.

I would like to publicly thank each Judge and Magistrate individually and members of the tribunals for their input this year, but with the increased number, we would be here for some time. Each has taken on cases that have required them to work hard, long hours which they have done without complaining. I am truly proud of the level of justice that is produced by the courts and tribunals. I would particularly like to single out Judge Robinson who bravely and patiently took on a massive case which tied her up for most of the year and which she diligently attacked long after the rest of us might have been tempted to give up. Judge Govinden, too, whilst already chairing a Judiciary Committee involved in updating our computer systems, took on additional work and chaired a disciplinary committee which lasted six months and held its hearings three times a week after work hours. The Judiciary's gratitude is also extended to Mr. Kieran Shah, Senior Counsel and Mr. Andy Asba, State Counsel for their work on this committee, which work was thankless and unremunerated. I also take this opportunity to thank Senior Magistrate Brassel Adeline for performing a killer year in which he presided over the highest number of criminal cases and found time to steer the Employment Tribunal. I also thank our Master Ellen Carolus for her hard work in disposing of so many matters while strongly guiding Counsel through both standard and complicated procedures.

We still have a long way to go to eradicate the backlog we have inherited but are confident that with the new measures and processes in place we are better equipped to tackle this problem.

In efforts to promote better engagement with the media and public, for certain cases last year we produced press summaries and for the Elections cases daily evidence summaries were published in collaboration with the association, Young Legal Minds.

In the midst of this process, we also received an urgent eviction notice, which required us to leave our beloved but dilapidated Magistrate premises in Victoria, and we had to shift five magistrate's courts and two tribunals in a very short period of time. The Unity House premises are not ideally suitable for Magistrate's Courts but the staffs of the Magistrates' Courts and the Family Tribunal have taken these difficulties in their stride. I thank them earnestly for their cooperation and congratulate them on having not accumulated any backlog in the process.

The Tribunals had a great year – with reform in the structure of the Boards, we saw a great reduction in the backlog at the Employment Tribunal and reform in the Family Tribunal despite ongoing problems with the legislation relating to these tribunals. I want to thank all tribunal board members, and staff especially the Chairs, Vice-Chairs and secretaries for their hard work this year.

I want to specifically acknowledge the trojan work undertaken both by the Registrar, Mrs. Juliana Esticot who has really found her feet in her role as the head of the Registry. I also wish to recognize the efforts of the senior members of management, namely the Financial Controller Mr. Ranjana de Silva, Director of Administration and Human Resources, Mr. Eric Savy, the Deputy Registrar, Mrs. Jeanine Lepathy and the the Human Resources Manager, Ms. Nichole Mathurin.

We undertook a strategic review that engaged with all branches and departments of the Judiciary. We are using this to develop a strategic plan that will be rolled out from now until 2020 and will put emphasis on driving the Judiciary towards its goal to be a centre for academic excellence.

In 2016, we re-established relationships with the Bar Association and instituted the practice of having a quarterly high tea held at the Palais de Justice. We look forward to greater collaboration with the BAS.

An important part of the theme for last year, and which will continue into this year, is to take a fresh look at what aspects of the past we want to continue to adhere to, and which practices are no longer suitable or useful in our pursuits. You might ask why we would engage in this exercise.

Seychelles has a mixed legal system, which means that we have borrowed traditions and practices from other legal systems, mainly the British colonial common law system, and the French civil code. In 1993, we adopted a modern style of democracy. This remarkable document we call the constitution, was adopted by the people as the supreme law of the land and was revolutionary in itself. It set about imbuing our system with a written set of rules governing state power and empowering the citizenry with fundamental rights which may be directly taken to court. But even this constitutionalism is steeped in the wording and traditions of other legal systems.

We have inherited practices, such as this opening of the Supreme Court, the walk through town, and the wearing of court gowns which we have consistently held on to since they were handed to us by our colonial rulers. These traditions, not written anywhere in law, hold differing places in the hearts of the members of the legal profession. This year the Judges and Magistrates in their monthly meeting took the decision to make the wearing of wigs in courtrooms optional. The practice was, in my mind, obsolete and impractical, however some judges and attorneys still wish to wear the wigs and we accept both. We are open to considering other practices and traditions and welcome the input of all stakeholders.

During our review of the system, we became aware of some unacceptable behaviour and practices which go right to the very heart of the issue of access to justice and we had to take some hard and controversial decisions. I have taken these decisions and have not always been able to make the full reasoning available to the public. With the support of the Judiciary behind me we stand by the decisions and the consequences of them.

Last but not least, during 2016 we saw a nice growth in our social events with a highly successful Creole Food festival hosted in our own car park and displaying a great range of food products; our soccer team was formed and boasts an impressive scorecard, our choir produced masterpieces such as the one this morning and we even entered a team in the Unity Relay which came seventh overall. We can be incredibly proud and grateful for the efforts of the social committee. I look forward to increased activities and engagement in 2017.

2016 was a tumultuous year for the Judiciary as a whole, for many individuals and even some major countries. It was also a year of extreme industry and I appreciate the work of each and every person within or related to the judiciary who have made it a success.

2017 - Unity in Diversity

And now as we look towards 2017, we are driven by the concept of creating unity within our diversity. It is a truism that we are stronger if we work together and earlier we heard multiple scriptural references and religious notions of unity creating a stronger organisation internally in order to provide a better service externally. Moreover, we need to work closer with other stakeholders and I hope to see more cooperation of the sort that we have seen in 2016.

For too long we have permitted an atmosphere of *kankan* and harmful gossip to disintegrate our internal coherency. Everyone is different, but each are equally deserving of having their dignity respected. As a legal profession, even as a country, we need to stop this habit of devouring our own. We are so quick to criticise, so quick to mistrust and to put down other people. As we have watched America and Europe bickering over race and immigrants, over liberal versus conservative, we need to ensure that we are able to put our differences aside, play to our strengths and work together because we have hard work to do.

In April 2017, we will say goodbye to our two Commonwealth Judges, Crawford Mckee and Dan Akiiki-Kiiza whom we shall miss. For your valiant efforts and the huge help you gave us for clearing our back log we thank you and the Commonwealth Secretariat for putting you at our service. .

In 2017, we are going to....

- Release a strategic plan that will take us to 2020. This will not be top-down reform, but rather is the result of a consultative process that has involved every grouping of persons in the judiciary and requires the buy in and efforts of every person in the judiciary in order to be successful.
- We are going to take a fresh look at the rules and procedure in the Judiciary and at the Seychelles Code of Civil Procedure, the Courts Act and all of the various Court and Tribunal rules in order to better consolidate and align these, making them better fit for purpose.
- A committee has already begun to consider the Court fees and costs and will finalise the reform this year including amendments to the Legal Aid services.
- We will bulk up our judicial continued education programme and employ legal researchers to assist with producing quality research for the judges.
- We have heard the concerns of the staff in the judiciary about training and morale and are looking to improve incentives and job satisfaction.

We are introducing the audio recording facilities in the Magistrate's court and beefing up our case management systems which will help to save courtroom time. We are looking to improve our IT capabilities to bring the Judiciary up to speed with reforms happening in other countries.

The Judiciary is reliant on the other branches of state in order to be successful. I call on the National Assembly to direct their focus into working with us to improve the court systems in the country. Last year, again, the reforms to the Employment Act were not finalised and we still wait for corrections to drafting errors in the Children's Act. The absence of an Access to Information Act burdens the court with disclosure applications. After a long consultative process, an expert panel has produced suggested amendments and detailed input into modernising the Civil Code and now requires National Assembly engagement. The Legal Practitioners Act sorely needs reform for consistency and we will be looking at the structure and shape of the Courts Act and the Seychelles Code of Civil Procedure this year and will require support in order to have any effect. I look forward to engaging with the new members of the National Assembly to set a priority list and devise a process for the reform that is required in order for the Judiciary to properly function.

Attorneys – I call on you to set the standard – you are part of a proud heritage of honour. You are the trusted advisers for your clients and on the whole, you are deserving of the respect that is placed in you. However, I have heard of worrying extortionate behaviour by certain persons - which needs to cease – not because I say it is wrong, not because the laws do, but because it is fundamentally abhorrent to abuse the trust placed in you by your clients. You are there to vindicate their rights, if their rights have been unlawfully infringed. You must advise your clients against filing frivolous cases, and where your client has a proper claim, focus on producing the highest standard of work that you can. I call on you to not pander to your egos in the media and to graciously allow the Courts to do their jobs without intimidation or spreading half-truths to the media. There is a process of appeals, a practice which is internationally accepted as a mechanism for ensuring that rights are vindicated. I look forward to engaging with you in developing continued legal education to keep your skills sharp and accurate. Thank you for the respect and restraint that you exhibit and for keeping the legal profession in such high regards both nationally and internationally. I look forward to another year of working together.

Our system of law is based on a principle called the rule of law with a mutually supporting separation of powers between the three branches of state, the executive, legislative and judiciary – demanding that all branches of state are accountable to each other, and tasked with specific duties to ensure that the other branches are held accountable. Moreover, we have institutions specifically set up by the constitution which remain outside of the structures of the state and answer only to the constitution; these institutions are such as the Electoral Commission, the Ombudsman and the Constitutional Appointments Authority. All of these bodies are responsible for a successful Seychelles and each has specific roles to play. Within the Judiciary, we each have individual roles and positions. We need to work together in 2017 so that it can be a year of moving forward, strategizing, focusing, improving.

I would like to finish with another quote from Sir James which summarises our hopes for 2017:

“I want to call for a partnership which comes more from the heart and less from political manoeuvring. I call for a Seychelles of greater fraternal harmony, more dialogue and social contacts among the players on the national stage. Let us sincerely and honestly collaborate to ensure that our common resources, our experience and goodwill work in harmony with the national interest. (Budget reply. December 1996. Seychelles Review – Dec 1996/Jan 1997)”

Thank you and please join us for some refreshments.

